



भारत का राजपत्र The Gazette of India

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प्राधिकार से प्रकाशित
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सं. 28] नई दिल्ली, जुलाई 9—जुलाई 15, 2023, शनिवार/आषाढ़ 18—आषाढ़ 24, 1945
No. 28] NEW DELHI, JULY 9—JULY 15, 2023, SATURDAY/ASHADHA 18—ASHADHA 24, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)
नई दिल्ली, 7 जुलाई, 2023

का.आ. 1173.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, झारखंड राज्य सरकार की अधिसूचना सं. 10/सी.बी.आई.-404/2021/1251, दिनांक 16.03.2023, गृह, कारागार एवं आपदा प्रबंधन विभाग, रांची के माध्यम से जारी सम्मति से, मो. मुबीन अंसारी पुत्र यार मोहम्मद निवासी नारायणपुर, ग्राम-पहाड़पुर, पोस्ट-सिंदूरी नारायणपुर, जामताड़ा, झारखंड-815352 द्वारा इंटरनेट पर इलेक्ट्रॉनिक रूप में बच्चों को यौन कृत्य में स्पष्ट रूप से दर्शाने वाली सामग्री सहित अश्लील सामग्री प्रकाशित/प्रसारित करने के अनैतिक आचरण में लिप्त होने के संबंध में सूचना प्रौद्योगिकी अधिनियम (2000 का 21) की धारा 67-बी और यौन अपराधों से बच्चों का संरक्षण अधिनियम, 2012 (2012 का 32) के तहत किए गए अभिकथित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने

के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त झारखंड राज्य में करती है।

[फा. सं. 228/39/2023-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel And Training)

New Delhi, the 7th July, 2023

S.O. 1173.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Jharkhand, issued vide Notification Memo No.-10/C.B.I.-404/2021/1251 dated 16.03.2023, Home, Prisons and Disaster Management Department, Ranchi, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Jharkhand for investigation into the offence(s) under section 67-B of the Information Technology Act, 2000 (21 of 2000) and Protection of Children from Sexual Offences Act, 2012 (32 of 2012) alleged to have been committed by Mohd. Mubin Ansari S/o Yar Mohammad R/o Narayanpur, Gram-Paharpur, Post-Sinduri, Narayanpur, Jamtara, Jharkhand-815352 by indulging in immoral practices of publishing/transmitting obscene material including the material depicting children in sexually explicit act in electronic form over the internet and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/39/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1174.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, झारखंड राज्य सरकार की अधिसूचना सं. जी.ओ. एमएस सं. 10/सी.बी.आई.-402/2022-2097, गृह, कारागार एवं आपदा प्रबंधन विभाग, रांची के माध्यम से जारी सम्मति से, (1) श्री एन. एल. रजक, भूतपूर्व एसओ (सेवानिवृत्त), (2) श्री परमेश्वर दास, एसओ (सेवानिवृत्त), (3) श्री एस. के. लाल, भूतपूर्व एसओ (सेवानिवृत्त), (4) श्रीमति मनीषा पूर्ति, वरिष्ठ एसएसए, (5) श्री मनोज लाकरा, वरिष्ठ एसएसए, (6) श्रीमति रीता उरांव, वरिष्ठ एसएसए, (7) श्रीमति संध्या लाल, वरिष्ठ एसएसए, (8) अवय कुमार सिन्हा, वरिष्ठ एसएसए, (9) टी.आर. नायक भूतपूर्व-आरसी-1, (10) अयोध्या पासवान, वरिष्ठ एसएसए, (11) त्रिपुरारी कुमार, पुत्र स्वर्गीय सुरेश कुमार, (12) श्री बिनोद कुमात, पुत्र सुदर्शन प्रसाद, (13) लवली ब्यूटी पार्लर, मार्फत अजय प्रसाद द्वारा भारतीय दंड संहिता (1860 का 45) की धारा 120-बी सपठित धारा 420, 409, 468, 471 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (जैसा कि भ्रष्टाचार निवारण अधिनियम, 1988 में दिनांक 26.07.2018 को किए गए संशोधन से पहले विहित किया गया था) की धारा 13 (2) सपठित धारा 13(1)(डी) और भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (2018 के अधिनियम 16 द्वारा यथा संशोधित) की धारा 7 के तहत किए गए अभिकथित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त झारखंड राज्य में करती है।

[फा. सं. 228/40/2023-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1174.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Jharkhand, issued vide Notification No. G.O. Ms No. 10/C.B.I.-402/2022-2097, Home, Prisons and Disaster Management Department, Ranchi, hereby extends the powers and jurisdiction of the members of the Delhi

Special Police Establishment to the whole State of Jharkhand for investigation into the offence(s) under section 120-B r/w 420, 409, 468, 471 of the Indian Penal Code (45 of 1860) and section 13(2) r/w section 13(1)(d) of the Prevention of Corruption Act, 1988 (49 of 1988) (as stood before the amendment made to the Prevention of Corruption Act, 1988 w.e.f. 26.07.2018) and section 7 of the Prevention of Corruption Act, 1988 (49 of 1988) (as amended by Act 16 of 2018) alleged to have been committed by (1) Shri N. L. Rajak, Ex. SO (Retd.), (2) Shri Parmeshwar Das, SO (Retd.), (3) Shri S. K. Lal, Ex-SO (Retd.), (4) Smt. Manisha Puri, Sr. SSA, (5) Shri Manoj Lakra, Sr. SSA, (6) Smt. Rita Oraon, Sr. SSA, (7) Smt. Sandhya Lal, Sr. SSA, (8) Avay Kumar Sinha, Sr. SSA, (9) T. R. Nayak Ex-RC-1, (10) Ayodhya Paswan, Sr. SSA, (11) Tripurari Kumar, S/o Late Suresh Kumar, (12) Shri Binod Kumar, S/o Sudarshan Prasad, (13) Lovely Beauty Parlor, C/o Ajay Prasad, and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/40/2023-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 30 जून, 2023

का.आ. 1175.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रम के निम्नलिखित कार्यालय को, जिनके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

बामर लॉरी एण्ड कम्पनी लिमिटेड,

पश्चिमी क्षेत्र, 5 जे एन हेरेडिया मार्ग,

बेलार्ड एस्टेट, मुम्बई - 400001

[फा. सं. 11012/3/2021-रा.भा.]

शोभना श्रीवास्तव, उप निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 30th June, 2023

S.O. 1175.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the central Government hereby notifies the following office of the Public Sector undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi:-

Balmer Lawrie & Company Limited,**Western Zone, 5 JN Heredia Marg,****Ballard Estate, Mumbai - 400001**

[F. No. 11012/3/2021-OL]

SHOBHANA SRIVASTAVA, Dy. Director (OL)

नई दिल्ली, 12 जुलाई, 2023

का.आ. 1176.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उप-धारा (3)(ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतद्वारा श्री जी. कृष्णकुमार, अध्यक्ष और प्रबंध निदेशक (सीएमडी), भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड (बीपीसीएल) को दिनांक 07.07.2023 से, या अगले आदेशों तक, तेल उद्योग विकास बोर्ड के सदस्य के रूप में नियुक्त करती है।

[फा.सं. जी-38011/41/2016-वित्त. I/ओएनजी-I]

आर.के. कुरील, निदेशक

New Delhi, the 12th July, 2023

S.O. 1176.—In exercise of the Powers conferred by Sub-Section (3)(b) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri G. Krishnakumar, CMD, BPCL as a member of the Oil Industry Development Board w.e.f. 07.07.2023, until further orders.

[F. No. G-38011/41/2016-F.I/ONG.I]

R. K. KUREEL, Director

श्रम और रोजगार मंत्रालय

नई दिल्ली, 5 जून, 2023

का.आ. 1177.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 06/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/06/2023 को प्राप्त हुआ था।

[सं. एल-20012/118/2018-आई.आर(सी.एम-1)]

मणिकंदन एन, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 5th June, 2023

S.O. 1177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.06/2019) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on 02/06/2023.

[No. L-20012/118/2018 – IR (CM-I)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD.

PRESENT

Dr. S. K. Thakur,

Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE NO. 06 OF 2019.

PARTIES: : The Regional Secretary (ECL) ,
Rastriya Colliery Mazdoor Sangh,
Rajender Path, Post Box No. 22 ,PO: Dhanbad (Jharkhand)
Vs.
The General Manager,
Mugma Area of M/s BCCL.,
PO: Mugma, Dhanbad,
(Jharkhand)

Order No. L-20012/118/2018 –IR(CM-I) dt. 05.02.2019

APPEARANCES :

On behalf of the workman/Union : None .
On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 20th March, 2023

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No.**

L-20012/118/2018 –IR(CM-I) dt.05.02.2019 .

SCHEDULE

Whether the Circular Ref. No. 10107 (w) 5656dated 28.06.1998 ,subjected as “Underground Allowance” issued by the General Manager (System & MP) , Eastern Coalfield Ltd., is legally sustainable in r/o clause 4.4.0 of National Coal Wages Agreement provisions of Industrial Dispute Act 1947 & provisions of Mines Act ,1952 and is proper considering transforming scenario of work in underground Mines ? If not, what reliefs are Shri Kumar Ch.Mahato & 36 others (List of workers enclosed) are entitled for ?

List of the workmen

Sl. No.	Name
1	Kartik Ch. Mahato
2	Mahender Paswan
3	Sushil Kr. Marandi
4	Jogindar Bhuia
5	Tulshi Bhuia
6	Biswanath Singh
7	Prabhu Saw
8	Binod Majhi
9	Dipak Bauri
10	Satyajit Rawani
11	J.P. Singh
12	Budhan Rabidas
13	Rampada Majhi
14	Congress Nahak
15	N.K. Harijan
16	Suresh Pd. Saw
17	Saheb Lal Majhi
18	Swapan Bauri
19	Minan Bauri
20	Paresh Turi
21	Chandi Bauri
22	Ramakbal Malla
23	Haru Muchi
24	Gend Ram
25	Tulshi Bhuia
26	Naran Gosai
27	Rabilal Manjhi
28.	Sonoban Paswan
29	Rabillal Majhi
30	Domain Majhi
31	Anil Kr. Sharma
32	Bipati Bauri
33	Musafir Chouhan
34	Pankaj Kr. Halder
35	Borani Bouri
36	Saman Mia
37	Md. Jilani

1 On receipt of the above reference, notice was sent to the workmen as well as to the Respondent/Management. The postal articles sent to the workmen, referred above duly delivered to the workmen union. The workman were given sufficient opportunity to file claim statement. But none turned up in spite of the opportunity afforded to file the claim statement, which shows that the workmen are not interested to adjudicate the matter on merit.

2. Since the workmen have neither put their appearance nor they have filed statement of claim to prove their case against the Respondent/management. The Tribunal is left with no choice, except to pass a “No Claim Award” and same is passed in the instant reference I.D Case No.06/2018.

3. Let the copy of the Award be sent to the Appropriate Government as required under Sec. 17 of the for publication.

Dr. S.K. Thakur, Presiding Officer

नई दिल्ली, 28 जून, 2023

का.आ. 1178.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (115/2013) प्रकाशित करती है।

[सं. एल - 41011/10/2013- आई आर (बी-1)]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2023

S.O. 1178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.115/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. L-41011/10/2013- IR(B.I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present - Sunil Kumar Singh-I,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Date: 28th April, 2023

Reference (CGITA) No. : 115/2013

1. The General Manager,
Western Railway,
Churchgate, Mumbai – 400020
2. The Divisional Railway Manager,
Western Railway,
Mumbai Central,
Mumbai

.....First Party / Employer

V

The General Secretary,
Paschim Railway Karmachari Parishad,
33, Moti Bhavan, 2nd Floor, Dr.D'Silva Road, Dadar (W),
Mumbai - 400028

(for the workmen (1) Shri Wasim Ahmed (2) Shri Navneet Kumar Pandey (3) Shri Shakeel Ahmed (4) Shri Mahendra Pratap Tripathi (5) Shri Dinesh Kumar Singh and (6) Shri Manoj Kumar Singh)

.....Second Party / Union / Workmen

Advocates for the First Party / Employer : Shri K. V. Gadhia &
Shri M. K. Patel

Representative for the Second Party / Union /

Workmen : Shri R. S. Sisodiya

AWARD

The Government of India / Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/10/2013-IR(B-I) dated 03.06.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad in respect of the matter specified in the Schedule as under.

THE SCHEDULE

“Whether the demand of the union Paschim Railway Karmachari Parishad, Mumbai for reinstatement in service of S/Shri (1) Wasim Ahmed, (2) Navneet Kumar Pandey, (3) Shakeel Ahmed, (4) Mahendra Pratap Tripathi, (5) Dinesh Kumar Singh and (6) Manoj Kumar Singh is legal, proper and just? If so, to what relief the concerned workmen are entitled to?”

1. At the very outset, it is worth mentioning that this Tribunal passed ex-parte award dated 28.07.2017 due to non-appearance of the first party / employer despite sufficient service. The first party / employer moved restoration / Misc. Application No. 40/2017, which was rejected vide order dated 05.04.2018. Both these orders dated 28.07.2017 and 05.04.2018 were challenged by the first party / employer before the Hon'ble Gujarat High Court in R/Special Civil Application No. 14926 of 2018 (converted from SCA/28743/2018 dated 25.09.2018). Hon'ble Gujarat High Court, vide order dated 30.07.2021 set aside the ex-parte award dated 28.07.2017 and order dated 05.04.2018 directing this Tribunal to decide the matter on merit after hearing both the parties.
2. The second party / union submitted the statement of claim at Ex. 5, stating that the workmen (1) Wasim Ahmed, (2) Navneet Kumar Pandey, (3) Shakeel Ahmed, (4) Mahendra Pratap Tripathi, (5) Dinesh Kumar Singh and (6) Manoj Kumar Singh, were appointed and permitted to join as per the directions of the first party / employer on 27.06.1995, 27.06.1995, 19.06.1995, 19.06.1995, 18.05.1995 and 27.06.1995 respectively as ad-hoc / substitute employees (Khalasi) at Valsad Electric Loco Shed after undergoing medical fitness test. The first party / employer initiated departmental enquiry for securing the appointments on the basis of false and forged records. An FIR criminal Case No. 101/1996 was also registered in the matter. 46th Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai vide order dated 19.01.2012 acquitted all the accused persons shown in said FIR. The first party / employer without waiting for the outcome of the criminal proceedings, terminated the services of the aforesaid six workmen w.e.f. 20.07.2000. The second party / workmen have further stated that despite their representations before higher authorities of Railway, the said workmen were not taken into service violating the principles of natural justice and Article 20 (2) & 20 (3) of the Constitution of India. Prayed for setting aside the termination order and reinstate the aforesaid workmen in service with all consequential benefits.
3. The first party / employer submitted its written statement at Ex. 21, stating therein that the second party / workmen secured their employment fraudulently with the first party by producing forged and fabricated documents. It has been specifically stated by the employer that none of the workmen was named as accused in the said criminal Case No. 101/1996 before 46th ACMM, Mazgaon, Mumbai. It is further averred that all the workmen were served with the charge sheet on 20.07.1996. After holding departmental enquiry and affording sufficient opportunities, the charges were proved and the second party / workmen were terminated vide order dated 20.07.2000. The departmental appeal filed by the second party / workmen before the Sr. Divisional Electrical Engineer, Valsad was also rejected vide appellate authority's order dated 01.02.2001. The first party / employer has further stated that out of 6 workmen mentioned in the schedule of reference, 5 workmen except Shri Manoj Kumar Singh, approached the Hon'ble Central Administrative Tribunal (CAT), Mumbai by way of filing O. A. No.'s 739/2000, 740/2004, 741/2004, 743/2004 & 745/2000 challenging their dismissal order dated 20.07.2000 along with one Shri Saroj Kumar Shukla vide O. A. No. 742/2000 and the Hon'ble CAT, Mumbai dismissed all the aforesaid O.A.'s vide order dated 22.10.2003 on merit. The said order has not been challenged by the second party / workmen before any higher forum, hence it has attained finality and the reference is barred by the principle of 'res judicata' and this Tribunal has no jurisdiction to adjudicate the present reference. The first party / employer has further pleaded that the second party / workmen approached this Tribunal after a long delay of 10 years. Prayed to dismiss the claim of the second party / workmen with cost.
4. The second party / workmen's union filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Serialam of Document	Type / Remarks
1	Office order issued from Mandal Rail Prabhandak,	18.05.1995	Ex. 9 /	Xerox

	Mumbai Central, in respect of appointment of Shri Dinesh Kumar Singh		M-9/1	
2	Office order issued from Mandal Rail Prabhandak, Mumbai Central, in respect of appointment of Shri Shakeel Ahmed and Shri Mahendra Pratap Tripathi	19.06.1995	Ex. 9 / M-9/1/1	Xerox
3	Office order issued from Mandal Rail Prabhandak, Mumbai Central, in respect of appointment of Shri Manoj Kumar Singh, Shri Navneet Kumar Pandey and Shri Wasim Ahmed along with 3 others	27.06.1995	Ex. 9 / M-9/1/2	Xerox
4	Letter written by Pradhan Karyalaya, Western Railway, Churchgate, Mumbai in respect of appointment of Shri Dinesh Kumar Singh along with 1 other	13.08.1994	Ex. 9 / M-9/2	Xerox
5	Appeal filed by 6 concerned workmen before the General Manager, Western Railway, Mumbai and Dy. General Manager, Western Railway, Mumbai against their dismissal from service	11.05.2012	Ex. 9 / M-9/3	Xerox
6	Representation from Paschim Railway Karmachari Parishad, Mumbai to The Assistant Labour Commissioner (Central), Mumbai, requesting to intervene in the matter of dismissal of six workmen	04.06.2012	Ex. 9 / M-9/4	Xerox
7	Letter from Western Railway, Mumbai to Shri Shakeel Ahmedabd in respect of his appointment	06.05.1995	Ex. 28/A M-28/A/1	Xerox
8	Letter from Western Railway, Mumbai in respect of appointment of Shri Shakeel Ahmed, Shri Mahendra Pratap Tripathi & Shri Wasim Ahmed	05.06.1995	Ex. 28/A M-28/A/2	Xerox
9	Office order issued from Mandal Railway Prabhandak, Mumbai Central, Railway in respect of appointment of Shri Shakeel Ahmed and Shri Mahendra Pratap Tripathi	19.06.1995	Ex. 28/A M-28/A/3	Xerox
10	Communication from Sr. DEE (TRS), Electronic Loco Shed, Valsad on the subject of recruitment	18.07.1995	Ex. 28/A M-28/A/4	Xerox
11	Reply of Shri Mahendra Pratap Tripathi to Asst. Electrical Engineer, O/o DEE (TRS), Elect. Loco Shed, Valsad	20.02.1996	Ex. 28/A M-28/A/5	Xerox
12	Order regarding subsistence allowance admissible to Shri Mahendra Pratap Tripathi	June 1996	Ex. 28/A M-28/A/6	Xerox
13	Orders of departmental enquiry issued by O/o DEE (REW) BL, DRM's Office, Mumbai Central against Shri Mahendra Pratap Tripathi	23.08.1996 & 13.01.1997	Ex. 28/A M-28/A/7 & 8	Xerox
14	Communication from DEE (REW) BL, O/o Sr. DEE/TRS, Electric Loco Shed, BL, Western Railway to all the workmen on the subject of Defence	26.03.1997	Ex. 28/A M-28/A/9	Xerox
15	Preliminary enquiry proceedings against Shri Mahendra Pratap Tripathi & one Shri Saroj Kumar Shukla	28.08.1998 & 12.07.1999	Ex. 28/A M-28/A/10	Xerox
16	Findings of departmental enquiry held against Shri Mahendra Pratap Tripathi	30.11.1999	Ex. 28/A M-28/A/11	Xerox
17	Findings of departmental enquiry held against some Shri Saroj Kumar Shukla	30.11.1999	Ex. 28/A M-28/A/11	Xerox
18	Representation of Shri Mahendra Pratap Tripathi against the findings of departmental enquiry to The DEE (TRS)/BL	08.01.2000	Ex. 28/A M-28/A/12	Xerox
19	Representation of Shri Shakeel Ahmed against the findings of departmental enquiry to The DEE (TRS)/BL	08.01.2000	Un-numbered	Xerox
20	Judgement passed by the 46 th Addl. Chief Metropolitan Magistrate, Mazgaon, Mumbai in criminal case serial no. 338/P/2000	19.01.2012	Ex. 28/A M-28/A/13	Xerox
21	Appeal memo filed by all the six workmen before the General Manager, Western Railway, Mumbai and Dy. General Manager, Western Railway, Mumbai against their dismissal from service	11.05.2012	Ex. 28/A M-28/A/14	Xerox
22	Representation from Paschim Railway Karmachari Parishad, Mumbai to The Assistant Labour Commissioner (Central), Mumbai	04.06.2012	Ex. 28/A M-28/A/15	Xerox

23	Letter from General Manager, Pradhan Karyalaya, Churchgate, Mumbai in respect of disciplinary proceedings in Hindi language	05.06.1989	Ex. 28/A M-28/A/16	Xerox
24	Information received from Information Cell, Mukai / ED under RTI Act, 2005	11.11.2020	Ex. 28/A M-28/A/17	Xerox
25	Policy Guidelines for engagement of substitute bungalow peons	12.11.2008	Un-numbered	Xerox
26	Information, enclosing 15 pages, received from Personnel Department Divisional Office, Bhavnagar Para, Western Railway, Gujarat on application dated 17.10.2020 of some Shri Amit Kumar filed under RTI Act, 2005	19.11.2020	Un-numbered	Xerox
27	Four letters in respect of Bungalow Peon appointed by General Manager, Western Railway (illegible)	Illegible	Un-numbered	Xerox
28	Information, enclosing 6 pages, received from Chief Workshop Manager's Office, Loco Carriage & Wagon Workshop, Freelandganj - Dahod on application dated 14.10.2020 of some Shri Amit Kumar filed under RTI Act, 2005	05.11.2020	Un-numbered	Xerox

5. The second party / workmen Shri Mahendra Pratap Tripathi, Shri Manoj Kumar Singh, Shri Shakeel Ahmed, Shri Navneet Kumar, Shri Wasim Ahmed and Shri Dinesh Kumar Singh have deposed themselves at Ex. 23, Ex. 24, Ex. 25, Ex. 26, Ex. 27 & Ex. 28 respectively.

6. The first party / employer has filed documentary evidence detailed as under:

Sl. No.	Name / Details of the document	Date of Document	Seriatam of Document	Type / Remarks
1	Order dated 22.10.2003 passed by Hon'ble CAT, Mumbai in O. A. No. 739/2000, 740/2000, 741/2000, 742/2000, 743/2000 & 745/2000	22.10.2003	Ex. 21 / Annexure A	Xerox

7. The first party / employer has not produced any oral evidence.
8. I have perused the records and heard Shri Yogi K. Gadhia & Shri M. K. Patel, advocates for first party / employer in addition to their written arguments submitted at Ex. 32 and Shri R. S. Sisodiya, representative for second party / workmen's union in addition to his written arguments submitted at Ex. 31.
9. Ld. Counsels for the first party / employer have drawn the attention of this Tribunal in respect of the consolidated orders dated 22.10.2003 passed by Hon'ble Central Administrative Tribunal, Mumbai Bench, Mumbai in O.A. No.'s 739/2000, 740/2000, 741/2000, 743/2000 & 745/2000 in respect of the workmen Shri Mahendra Prasad Tripathi, Shri Navneet Kumar Pandey, Shri Dinesh Kumar Singh, Shri Shakeel Ahmed & Shri Wasim Ahmed, arguing that Hon'ble CAT, Mumbai Bench, Mumbai has passed detailed order on merit in respect of the aforesaid five workmen with the observation that these workmen secured the appointment fraudulently by producing false and forged documents and the cases of the aforesaid five workmen were dismissed. He has further argued that the present reference is barred by the principle of 'res judicata' and this Tribunal cannot re-adjudicate the same issue again.
10. Ld. Counsel for the second party / workmen has argued in accordance with his written submissions filed at Ex. 31 and emphasised that the cause of action arose at Valsad in Gujarat, hence this Tribunal has the jurisdiction to decide this industrial dispute and the Hon'ble Central Administrative Tribunal at Mumbai was not competent and had no jurisdiction to pass any order in the matter and argued that the principle of 'res judicata' is not applicable in the present industrial dispute.
11. In view of the arguments raised by the Ld. Counsels for the first party / employer in respect of the bar of 'res judicata' to the present proceedings, it deems just and proper to firstly give finding as to whether this reference is barred by the principle of 'res judicata'?
12. The question of applicability of the principle of 'res judicata' before this Tribunal is no more 'res integra'. The Apex Court in Chairman and Managing Director, the Fertilizers and Chemicals Tranvancore Ltd. V General Secretary, Fact Employees Association, 2019 (o) AIJEL-SC 63977, has clarified this situation. The relevant Paras 23 to 27 of the judgement read as under.

"23. In our considered view, the question, as to whether the principle of res judicata defined in Section 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") applies to the labour proceedings or not, remains no more res integra and stands answered by three decisions of this Court.

24. The first case is *R. C. Tiwari V MP State Co operative Marketing Federation Ltd. & Ors.* (1997) 5 SCC 125. In this case, an employee of a cooperative society was dismissed from the services. He, therefore, referred the dispute of his termination to the Registrar under Sections 55 and 64 of the M.P. Cooperative Society Act. The Deputy Registrar upheld the finding of the misconduct recorded in the domestic inquiry against the employee and upheld the termination as being legal and proper. The State then made a reference to the Labour Court under Section 10 of the ID Act for deciding the legality of the termination by the Labour Court. The Labour Court, however, declared the domestic inquiry invalid and, in consequence, held the termination as bad in law. The employer, therefore, filed a writ petition in the High Court of MP. The High Court allowed the writ petition and set aside the award of the Labour Court. The employee then carried the matter to this Court in appeal. This Court dismissed the appeal and affirmed the view taken by the High Court.

25. This Court ruled that the reference to the Labour Court made by the State under Section 10 of ID Act was hit by the principle of res judicata defined under Section 11 of the Code and, therefore, the reference made to the Labour Court was barred. It was held that the issue of termination of the employee was earlier gone into by the Deputy Registrar on its merits and the same once answered against the employee, it could not be again gone into in the reference proceedings by the Labour Court. This is what is held in Para 4:

“4. Admittedly, there is a finding recorded by the Deputy Registrar upholding the misconduct of the petitioner. That constitutes res judicata. No doubt, Section 11 CPC does not in terms apply because it is not a court, but a tribunal, constituted under the Societies Act is given special jurisdiction. So, the principle laid down there under mutatis mutandis squarely applies to the procedure provided under the Act. It operates as res judicata. Thus, we find that the High Court is well justified in holding that the Labour Court has no jurisdiction to decide the dispute once over and the reference itself is bad in law.”

26. The second case is *Pondicherry Khadi & Village Industries Board vs. P. Kulothangan & Anr.*, (2004) 1 SCC 68. In this case also, this Court again examined the question as to whether the principle of res judicata including the principles of constructive res judicata applies to the industrial adjudication or not. Though this Court did not notice the law laid down in the case of *R.C.Tiwari* (supra), yet it took the same view, as is clear from Paras 10 and 11:

“10. In our opinion, the appellant has correctly contended that the industrial dispute pertained to the same subjectmatter dealt with in the earlier writ proceedings and was barred by the principles of res judicata. It is well established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code are applicable including the principles of constructive res judicata. Thus in *State of U.P. v. Nawab Hussain*, 1977(2) S.C.C. 806, it was held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal was challenged on the ground that it was incompetently passed. This Court also held: (SCC p. 808)

It may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process.

11. The principle of res judicata operates on the court. It is the courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties, provided the court trying the subsequent proceeding is satisfied that the earlier court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such court. Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service. The Madras High Court was competent to decide the issue which it did with a reasoned order on merits and after a contested hearing. This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in *Workmen v. Board of Trustees of the Cochin Port Trust*, 1978(3) S.C.C. 119 and *Pujari Bai v. Madan Gopal*, 1989(2) R.R.R. 106. The “lesser relief” of reinstatement which was the subject matter of the industrial dispute had already been claimed by the respondent in the writ petition. This was refused by the High Court. The

correctness of the decision in the writ proceedings has not been challenged by the respondent. The decision was, therefore, final. Having got an adverse order in the writ petition, it was not open to the respondent to re-agitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and re-decide the matter in the face of the earlier decision of the High Court in the writ proceedings.”

27. The third case is Executive Engineer, ZP Engg. Divn. & Anr. V Digambara Rao & Ors., (2004) 8 SCC 262. In this case also, this Court placing reliance on the decision in Kulothangan (supra) reiterated the same view, earlier taken by this Court in the case of R.C. Tiwari (supra) with these words:

“15.....It is now well settled that the general principle of res judicata applies to an industrial adjudication.”

13. Now coming to the facts of the case in hand, this Tribunal has to answer the reference as to whether the demand of union on behalf of above named six workmen for their reinstatement in service, is legal, proper and just?
14. It is not in dispute that the basis of this industrial dispute is the termination order dated 20.07.2000 passed by the employer after full-fledged departmental inquiry, in which the workmen were found to have secured employment by producing forged and fabricated documents.
15. Out of six workmen, five workmen Shri Mahendra Pratap Tripathi, Shri Shakeel Ahmed, Shri Navneet Kumar Pandey, Shri Wasim Ahmed and Shri Dinesh Kumar Singh have admitted in their affidavits submitted in their examination in chief at Ex. 23, Ex. 25, Ex. 26, Ex. 27 and Ex. 28 respectively that they had challenged the said termination orders dated 20.07.2000 before Hon'ble Central Administrative Tribunal, Mumbai and Hon'ble CAT had rejected the claim of these five workmen on 22.10.2003. These five workmen have further admitted that the order passed by the Hon'ble CAT has attained finality because it was not challenged before the Hon'ble High Court of Bombay. Hence the contents of the photocopy of the Hon'ble CAT's order dated 22.10.2003 filed by the first party / employer as annexure A to its written statement, are undisputed. The perusal of order passed by Hon'ble CAT discloses that the issue involved in the proceedings before Hon'ble CAT, Mumbai Bench, Mumbai was securing the appointment of these workmen by production of forged and fabricated documents. All incidental issues arising thereon have accordingly attained finality. Five workmen as aggrieved party in the present reference and the employer are the same as were before the Hon'ble CAT at Mumbai. The question of legality of termination order dated 20.07.2000 was directly and substantially in issue before Hon'ble CAT which was heard and finally decided vide Hon'ble CAT's order dated 22.10.2003 on merits
16. As far as the arguments of the union / workmen in respect of the incompetence of Hon'ble CAT to decide the dispute is concerned, Section 2 of the Administrative Tribunal Act, 1985 does speak of exclusion of jurisdiction of Hon'ble CAT in respect of a person holding civil post in the Union of India or under 'railway department' under the Indian Union. Section 28 of the Administrative Tribunal Act, 1985 also does not oust the jurisdiction of its creation in the form of 'CAT'. Hence Hon'ble CAT also has inbuilt jurisdiction in respect of such service matters.
17. Hon'ble Supreme Court in Telecom District Manager and others V Keshab Deb, 2008 (8) SCC 402, has held that Section 28 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims himself to be a workman, therefore, will have a right of election in the matter of choice of forum. It is therefore not correct to contend that Central Administrative Tribunal has no jurisdiction to pass the impugned order. This apart, the head quarter of the first party / employer is situated at Mumbai where from the initiation of securing employment by the workman by producing forged and fabricated documents is said to have commenced. Part of cause of action arose at Mumbai, hence territorial jurisdiction can also not be disputed. The law laid down by Apex Court in Keshab Deb (supra), squarely applies to the facts of the present reference, hence it is held that Hon'ble CAT at Mumbai was a competent Court to decide the said dispute vide its order dated 22.10.2003.
18. It is now not necessary to examine the merits of the present case as it is not legally permissible because it does not survive for consideration having once decided in earlier round of litigation having attained finality to the extent of five above named workmen. It is not open to these five workmen to re-agitate the issue again before this Tribunal. The reference is accordingly partially barred by the principle of 'res judicata' to the extent of above said five workmen namely Shri Wasim Ahmed, Shri Naveen Kumar Pandey, Shri Shakeel Ahmed, Shri Mahendra Pratap Tripathi and Shri Dinesh Kumar Singh.
19. The remaining workman Shri Manoj Kumar Singh did not file any case before the Hon'ble CAT, Mumbai. Hence the reference is examined partially on merit only to the extent of this single workman. Shri Manoj

Kumar Singh filed affidavit Ex. 24 in his examination in chief wherein he has stated to have filed his claim before the Hon'ble CAT. This seems to be drafting error and deserved to be ignored.

20. The case of workman Shri Manoj Kumar Singh is similar to the case of aforesaid five workmen. Shri Manoj Kumar Singh has admitted in his cross-examination at Ex. 24 that he was served with the charge sheet by the Railway for submitting forged documents. He has further admitted that he was dismissed from service on 20.07.2000 on the basis of the inquiry conducted by the Railway against him. He has further admitted that all the relevant papers related to the inquiry were given to him. He has also stated in his examination in chief that he also preferred departmental appeal on 25.07.2000 against the termination order dated 20.07.2000. The departmental appeal was also dismissed on 01.02.2001. Admittedly, he was not the accused in the said criminal case no. 101/1996 wherein the concerned accused persons are said to have been acquitted vide order dated 19.01.2012 passed by ACMM, Mazgaon (Mumbai). Hence the entire statement of the workman goes to show that the principles of natural justice were fully observed in the departmental inquiry. This workman has made no endeavours to summon and produce any other witness in support of his claim. The workman Shri Manoj Kumar Singh was removed from service for submitting false and forged letter of appointment. The termination order dated 20.07.2000 thus amounts to the cancellation of his appointment. He is not entitled for the claimed relief. The demand of the union for reinstatement of workman Shri Manoj Kumar Singh is not legal, proper and just.
21. Hence, in view of aforesaid discussions and law laid down by Hon'ble Supreme Court in the Fertilizers and Chemicals Tranvancore Ltd. (supra) and Keshab Deb (supra), the reference in respect of five workmen namely Shri Wasim Ahmed, Shri Navneet Kumar Pandey, Shri Shakeel Ahmed, Shri Mahendra Pratap Tripathi, and Shri Dinesh Kumar Singh cannot be adjudicated as the same is barred by the principle of 'res judicata'. As far as the demand of the union for reinstatement of remaining workman Shri Manoj Kumar Singh is concerned, the same is not legal, proper and just. The reference is answered as stated above.
22. The award is passed accordingly.

Let two copies of the Award be sent to the appropriate Government for the needful and for publication.

SUNIL KUMAR SINGH-I, Presiding Officer

नई दिल्ली, 6 जुलाई, 2023

का.आ. 1179.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (17/2017) प्रकाशित करती है।

[सं. एल-12012/01/2017-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 6th July, 2023

S.O. 1179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.17/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen.

[No. L-12012/01/2017-IR(B-II)]

SALONI, Dy. Director

ANNEXURE
BEFORE THE CGIT-CUM-LABOUR COURT &
EPF APPELLATE TRIBUNAL
CHENNAI
ID No. 17/2017

Present: DIPTI MOHAPATRA, LL.M.
PRESIDING OFFICER
Date: 21.06.2023

Smt. S. Gomathi
W/o Sri Velusamy
No. 116, Venkatapuram
Chinnamalai

Chennai-600015

: 1st Party/Petitioner

1. Managing Director

Indian Overseas Bank
Central Office, Indian Relations Department
Anna Salai

Chennai-600032

: 2nd Party/1st Respondent

2. The Branch Manager

Indian Overseas Bank
Dr. MGR Medical University Branch

Chennai-600032

: 2nd Party/2nd Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s Sri. T. Ramkumar

For the 2nd Party/Respondent : Advocates, M/s Sri K.K. Sivashanmugham

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/01/2017-IR (B.II) dtd. 10.03.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Indian Overseas Bank, is justified and legal in not considering the case of Smt. S. Gomathi for absorption into the Bank’s services and terminating her from service without notice? If so, to what relief is Smt. S. Gomathi is entitled to?”

2 On receipt of the above reference from the appropriate Government, is registered as ID No. 17/2017 and due notices were issued to both parties for their appearance and documents on 10.04.2017. The Respondent represented through Counsel, but the Petitioner did not turn up. The case was adjourned to 03.05.2017. The Petitioner filed Vakalath and Claim Statement. Counter Statement and Documents were filed by Respondent on 29.06.2017. The case was listed for Rejoinder till 05.09.2018 intervening several dates. It reveals from the Order Sheet that sine the post of Presiding Officer lying vacant for the above period no progress was noticed. After joining of the Presiding Officer, the case was re-scheduled for hearing. The case was listed to 11.02.2019. On that day, while the Respondent was present, none on behalf of the Petitioner was present nor any Rejoinder was filed. The case was listed to 19.02.2019 directing the Petitioner to file Affidavit Evidence. Since then the case was listed to further dates intervening 5 adjournments for the same purpose till 22.10.2019. The Petitioner filed Proof of Affidavit and Documents. The case was listed to 14.01.2020 for Cross-Examination. Since the case was listed to several dates till 27.10.2021 intervening 8 adjournments for the same purpose. The Petitioner did not turn up for Cross-Examination. However, taking into consideration the prevailed hard situation of outbreak of Pandemic COVID-19, no coercive step was taken against the Petitioner but the Tribunal dealt the matter leniently and for the interest of justice, the case is again listed to 28.12.2021 for Cross-Examination. The Petitioner did not turn up. Even then the Tribunal suo-moto afforded 7 adjournments for Cross-Examination till 01.03.2023. On that day, the Counsel for the Respondent who almost appears on each date of posting raises strenuous objection not to post to any other date but to dispose of the case in accordance to Law. The Petitioner did not appear on repeated calls. The case was accordingly reserved for final order as it reveals that despite of several opportunities, though were made available to the Petitioner to prove her case by adducing Evidence, she chose not to depose evidence in support of Proof of Affidavit. It is crystal clear that the Petitioner deliberately withheld herself to come to the Witness Box. Due to non-participation of the Petitioner in the proceeding there was no progress in the case. The case is simply dragged for more than six years.

3. In such circumstance, the Tribunal is not in a position to adjudicate the dispute as referred by the Appropriate Government vide dtd. 10.03.2017. The case is liable for dismissal due to non-cooperation and default in appearance of the Petitioner. In the circumstance, it is held proper to dispose of the case without wasting the valuable time of the Tribunal.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID case stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 21.06.2023)

नई दिल्ली, 6 जुलाई, 2023

का.आ. 1180.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (5/2017) प्रकाशित करती है।

[सं. एल-39025/01/2023-आई आर (बी-II)-20]

सलोनी, उप निदेशक

New Delhi, the 6th July, 2023

S.O. 1180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.5/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023-IR(B-II)-20]

SALONI, Dy. Director

ANNEXURE
BEFORE THE CGIT-CUM-LABOUR COURT &
EPF APPELLATE INDUSTRIAL
CHENNAI
ID No. 5/2017

Present: **DIPTI MOHAPATRA, LL.M.**
PRESIDING OFFICER
Date: 01.06.2023

N. Gunasundari
W/o Nagendra
No. 32, Old Edappadi Road
Kottai Street
Sankakiri
Salem District
AND

: 1st Party/Petitioner

1. The Branch Manager
Punjab National Bank
ICL Complex, Bavani Main Road
Sankariri
Salem District-637303

: 2nd Party/1st Respondent

2. The Chief Manager
Punjab National Bank
[(Circle Office (HRD))]
Trichy-620014

Presently at

Khandha Enclave

179, Sarojini Street

Ramnagar

Coimbatore-641009

: 2nd Party/2nd Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s Arunachalam Associates

For the Respondents : Advocates, M/s S. Jayaraman

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant raises the dispute challenging the denial of her job as Part-Time Sweeper by the First Respondent Bank since 30.06.2015. The case of the Applicant in brief is that she was appointed as Part-Time Sweeper in the First Respondent Bank on 01.06.2009. She was all along doing the menial work such as Sweeping, Cleaning, File Stitching and Carrying files, etc. at par with the job profile of a Messenger or a Peon with initial remuneration paid on daily basis. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job but on the other hand despite of her continuance in job for 6 years, 1 Month, the Applicant was denied the job on 30.06.2015 without prior intimation. It is further contended that as per the Bipartite Settlement dtd. 19.10.1996 when the Applicant has completed 5 years unblemished service need to be afforded with preference for filling up the permanent vacancies. It is further contended that when some vacancies arose the Applicant made oral and written representations to place her on the full time job in place of part-time job. The First Respondent Bank though recommended her name for such post, the Second Respondent did not consider her case, but resorted to direct recruitment of subordinate cadre posts with prescription of higher qualification, age limit, etc. vide publishing necessary advertisement in Tamil Daily i.e. "Thanthi" on 03.12.2014. The advertisement was for filling up of 80 permanent vacancies in Trichy Circle.

3. It is further pleaded that the denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section 2(oo) of the ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of her. She raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry which was subsequently transferred to Dy. CLC (C), Chennai. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of her reinstatement in service with backwages and all other attendant benefits and regularization of his service from the date of his appointment

4. Both the Respondents entered appearance by filing Common Counter Statement traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a Workman within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent's Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1985 reached by the All India PNB Employees Federation and the Bank which was circulated vide Circular No. 772 dtd. 17.05.1984 clearly speaks about the procedures to be followed unless Thikana system is prevailed in the particular area. The said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said circular, the Bank had issued another PAD Circular dtd. 72 dtd.11.02.2012 which also provides for Rules regarding the eligibility for posting of Part-Time Sweepers in various branches. It is further contended that no right exists for any person to claim regularization / absorption in Bank de hors the Bank's Rules and Guidelines. The Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed on 01.06.2009 or terminated from service on 30.06.2015. There was no Service Agreement in between the Bank and the Petitioner. The claim of the Applicant is not sustainable in the eye of law. The Petitioner / Applicant is not entitled to any relief as sought for.

5. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, N. Gunasundari while examined herself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 23 documents marked as Ext.W1 to Ext.W23. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and relied on 6 documents already produced on 24.02.2022 in ID 37/2022 ie Ext.M1 to Ext.M6. It submitted since those documents are common documents for the entire batch case, may be taken to consideration.

The pleadings of both parties, brings out the following issues for determination:

- (i) Whether the Applicant is a Workman within the purview of 2(s) of the ID Act.

- (ii) Whether there exists relationship of Employer-Employee in between the Respondent and the Petitioner.
- (iii) Whether the Applicant was terminated without prior notice?
- (iv) To what relief the Applicant / Petitioner is entitled to?

Issues (i) & (ii)

6. Since the Issues I & II are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner while states to have joined the Respondent Bank on 01.06.2009 as Part-Time Sweeper and continued till termination on 30.06.2015, the WW2 corroborates the fact. He introduced himself as the General Secretary of Punjab National Employees Union affiliated to All India Bank Employees Association and being authorized by the present Petitioner and the Petitioners of a bunch of cases initiated against the Respondent almost on same and similar grounds. WW2 categorically states that he was employed as a Clerk and rendered service for 25 years till his superannuation in the year 2019. He further states that he knows that the Petitioner on being engaged as Temporary Employee, was doing the menial work of Sweeping, Cleaning, File Stitching, carrying files, etc. as good as a Permanent Employee. The Respondent on the other hand adduces evidence through the Manager (HR), one Mitra Teja who denies the plea taken by the Petitioner. It is stated that the Petitioner cannot plead to project herself as a workman within the purview of Section-2(s) of the Industrial Disputes Act, as much as her services was utilized as and when required by the Respondent Bank and she was adequately paid for her service. The Petitioner is debarred from backdoor entry. It is admitted by both the parties that no Appointment Letter was ever issued in favour of the Petitioner nor any Termination Letter was issued. Accordingly, the claim of the Petitioner for reinstatement with back wages is not acceptable. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record.

7. In view of the evidence made through the Witnesses as well as arguments advanced by both the parties, it is to be seen if there exists any Employer-Employee relationship in between the Petitioner and the Respondent. In this context the documents filed by the Petitioner are taken into consideration. The admitted undisputed fact remains that at no point of time, the Petitioner was issued with any Written Appointment Letter by the Respondent nor was issued any Termination order. At the outset, on a close perusal of documents relied by the Petitioner, it reveals that the Petitioner made an application vide Ext.W1 dtd. 19.04.2010 to offer her the post of Part-Time Sweeper which was enclosed with Ext.W2 reflecting the requisite qualification issued by the Branch. Ext.W3 is another application of the Petitioner dtd. 28.09.2010 in Tamil version addressed to Zonal Manager, Trichy. Ext.W4 is a communication from Chief Manager (HRD) to the Incumbent Incharge, Branch Office, Sankakiri (West) for recruitment of Part-Time Sweeper. Ext.W5 is a forwarding letter dtd. 01.10.2010 communicated by the Manager addressed to the Chief Manager (HRD), Trichy which was enclosed with the Bio-Data and applications vide Ext.W1, Ext.W2 and Ext.W3. In the said letter he recommended to consider the application of the Petitioner showing her to have worked as Part-Time Sweeper since July, 2009 as against the vacant post of retired PTS. It is also mentioned therein in Ext.W5 that the Petitioner was also engaged on Daily Wage Basis even prior to the retirement of the PTS. It needs mention that Ext.W5 does not disclose the name of the retired PTS against whose vacancy the Petitioner was engaged. Ex.W7 is the letter of request issued vide dtd. 21.01.2011 of the Senior Manager addressed to Chief Manager (HRD), Trichy Circle recommending consideration of the application of the Petitioner to recruit her as Part-Time Sweeper for their Sankakiri Branch, already sent on 01.10.2010 vide Ext.W5. While recommending the Application of the Petitioner, the Senior Manager stated therein that the Petitioner has been working since 2009. In this context, the submission of the Learned Counsel for the Petitioner has got sufficient force to consider the fact of engagement of the Petitioner in the year 2009. So far the claim of engagement date is concerned, no supporting evidence has been adduced. Not a single scrap of document has been filed on behalf of the Petitioner that she joined on 01.06.2009. Even if the contentions of Ext.W5 is taken into consideration that the Senior Manager categorically stated that the Petitioner was engaged in the month of July 2009 on Daily Wage Basis during leave period, even prior to the retirement of the then PTS, such fact cannot be accepted so far the claim of Petitioner that she joined on 1st June 2009. Ext.W5 is silent about the name of PTS and the date of his retirement which resulted in filling up the vacancy by the Petitioner. Therefore, the claim of the Petitioner to have joined as Part-Time Sweeper on 01.06.2009 has got no bearing so far as the documents are concerned but it can be well accepted that she has been working since July 2009 in view of Ext.W5 and Ext.W7.

8. In this context, it is to be seen if at all by accepting the fact of engagement of Petitioner would translate that there exists the Employer-Employee relationship in between the Respondent and Petitioner. It needs mention that the Petitioner has produced a number of documents denoting a number of correspondences made by the General Secretary, All India Punjab National Bank Employees Federation (AIPNBEF) to General Manager (P&A) requesting to follow the Desai Award vide Ext.W8. Ext.W9 is the MoU arrived in between the Bank and AIPNBEF dtd. 22.02.2014 with regard to the promotion of an Employee in Subordinate Cadre including Part-Time Employees in the Subordinate Cadre drawing full-scale wage, shall be eligible for promotion to the Clerical Cadre. The educational criteria was defined therein (in Ext.W9) for four categories and the fifth category denotes for Non-Matriculate

Employee with 8 years service shall be eligible for promotion to the next cadre. Ext.W10 is a proposal raised by the General Secretary of AIPNBEF and circulated vide letter dtd. 24.02.2014 to all the Office Bearers, CCMS and General Secretaries of State Affiliates for conversion of Part-Time Employees (PTE/Sweeper) as Peon. Ext.W11 is an incomplete document which is nothing but a congratulation letter in favour of the General Secretary, PR Mehta, AIPNBEF for signing the settlement with the Management making the PTS eligible for promotional process in the Clerical Cadre. Ext.W12, Ext.W13 and Ext.W14 (pertaining to Credit Cash Challans shall be discussed separately). Ext.W15 is also a communication of General Secretary, AIPNBEF to the General Manager (P&A) requesting to revisit and to revise the Educational Qualification criteria from 10+2 to fix at minimum 8th Standard Pass or Equivalent Course for recruitment to Subordinate Cadre Peons. Ext.W16 states about the letter of communication by the General Secretary, AIPNBEF to all Temporary Staff Members to provide complete details for resolving the issue under Ext.W15. Ext.W17 is a circular for Special Recruitment Drive for recruitment of Peons in Subordinate Cadre. Ext.W18 is the Representation (in Tamil Version) of the Petitioner dtd. 07.02.2016 demanding employment after her oral termination on 30.06.2015. Ext.W19 is the repeat of the same document of Ext.W18.

9. At the outset, it is pertinent to mention that the Petitioner raised the dispute vide her Representation dtd. 01.06.2016 before the Conciliation Officer-cum-ALC (C), Chennai. It reveals the Respondent entered appearance and furnished the reply objection on dtd. 23.08.2016 vide Ext.W20. After expiry of the prescribed time limit of 45 days, since the dispute could not be resolved, the Petitioner approached this Tribunal under Section-2A(3) of the ID Act, 1947 by obtaining a Certificate from the Conciliation Officer-cum-ALC (C), Chennai dtd. 23.11.2016.

10. Ext.W21 is a letter of communication by the General Secretary, AIPNBEF in favour of the Executive Director regarding request for recruitment of workmen staff other than Godown Keeper are to be given preference for filling up permanent vacancies. The above documents as discussed are found not helpful to the case of the Petitioner. Almost all these documents are the communications made by the Union represented through State Level General Secretary to the National Level General Secretary of Federation suggesting the improvement of promotional avenues of the Subordinate Temporary Staffs. Some of those communications are found to have been communicated to the appropriate authorities for approval and sanction. But the Petitioner seriously failed to produce any approval or sanction letter with regard to the suggestions made by the General Secretaries of the Union and Federation. Thus, all these documents do not come to the rescue of the Petitioner. Ext.W22 is the Extract copy of the 8th Bipartite Settlement with regard to their wage limits restricted to working hours. Ext.W23 is the extract of the 9th Bipartite Settlement with regard to the wages of Part-Time employees restricting to working hours.

12. It is pertinent to mention that the Learned Counsel for the Petitioner tried his best to convince the Tribunal that the Petitioner since engaged from 01.06.2009 and continued till her termination on 30.06.2015 by adducing the aforesaid documents under Exhibits. However, at the cost of repetition it needs mention that out of those documents only two documents i.e. Ext.W5 and Ext.W7 can be taken into consideration so far the claim of the Petitioner's engagement is concerned. Besides, the documents under Ext.W12, Ext.W13 are two sheets containing the Xerox copy of three Credit Cash Challans each regarding the payment towards Water Tax. Ext.W14 contains a single Credit Cash Challan towards payment of Water Tax and Electricity. Admittedly, all these Challans bear the logo of PNB and the signature of the Petitioner appears on the reverse of each of such Credit Cash Challan under Ext.W12 to Ext.W14. These Challans pertain to different months i.e. August, November and December of 2014. By producing these documents, the Learned Counsel for the Petitioner however tries to convince the Tribunal with regard to the fact of service of the Petitioner utilized in different ways during different time spells beyond her exclusive duty as Part-Time Sweeper. In this context, it is vehemently argued by the Learned Counsel for the Respondent that even if the Credit Cash Challans bear the signature of the Petitioner, such mere fact cannot be the basis for the Petitioner to claim of continuous engagement in the Respondent Bank that too in want of relevant supporting documents such as Wage Vouchers for the relevant period of claim. Admittedly, the Petitioner even though relied on a bunch of documents, 23 in all, failed to file a single document with regard to Wage.

13. On the other hand, the Counsel for the Respondent drew attention to the common documents filed by the Respondent in ID 37/2016 on dated 24.02.2022 (marked therein as Ext.M1 to Ext.M6). MW1, Sri Mitra Teja, the HR Manager of the Respondent's Bank categorically states that at present there are 5 Circle Offices with approximate 225 branches across the State of Tamil Nadu. The Zonal Office of the Respondent's Bank is situated in Chennai whereas the Head Office is at Delhi. MW1 adduced evidence with regard to the procedures followed by the official protocol that all Branch Managers report to the Competent Officer / Authority of the concerned Circle Office. In that circumstance, all official actions taken by the Branch Managers are reported to the concerned Competent Officer / Authority of the Circle Office. In that case, even if any person is engaged as a Part-Time Worker for a specific period of time, that would not bind upon the Respondent's Bank to define the Employee as a regular employee. In the instant case, even if the then Branch Manager of Sankakiri Branch communicated two nos. of letters of request vide Ext.W5 and Ext.W7 to the higher authorities, no approval or sanction was accorded by the Competent Authority. Accordingly, in such circumstance, even if it is accepted that the Petitioner was engaged for some time in Sankagiri Branch, it cannot said to be an engagement made by the appropriate Competent Authority. It is pertinent to mention that in

view of the discussion held supra with regard to the procedures and protocol system prevailed in the Bank, such temporary engagement of any person as and when required by the Branch Manager who is not a Competent Authority in this regard, cannot hold good to say that there exists Employer-Employee relation in between the Respondent and the Petitioner.

In view of the discussions vide preceding paragraphs, the Issues (i) & (ii) are answered against the Petitioner.

Issues (iii) & (iv)

14. Admittedly, the Petitioner failed to produce a single scrap of document to substantiate that she was disbursed with component of wage either weekly, monthly or annually preceding 240 days of her termination dtd. 30.06.2015, claimed as oral termination. In this regard the documents filed by the Respondent in ID 37/2016 are taken into account. Ext.M1 is the settlement dtd. 07.05.1984 in between the parties with regard to the fixation of wages and other allied matters like Recruitment and Appointment. Ext.M2 is a Circular dtd. 11.02.2012 issued by the Respondent Bank posting of Part-Time Sweeper in the Branches. Ext.M3 is the Circular dtd. 26.03.2014 banning Temporary Appointment in the Bank. Ext.M4 is the Circular dtd. 21.09.2015 issued by the Bank with regard to the Recruitment and Appointment of Part-Time Sweeper. Similarly Ext.M5 is the HRMD Circular letter no. 10/2016 circulated on 04.07.2016 for alternative mechanism in lieu of interviews for Recruitment of Full-Time Sweeper or Part-Time Sweeper. The HRMD Circular no. 430 was circulated on 28.11.2018 banning Temporary Appointment in the Bank. This witness accordingly states that the Petitioner is not entitled to any relief as sought for. This part of his evidence is supported by the argument advanced by the Learned Counsel for the Respondent.

16. In view of the discussion held in preceding paragraphs and the materials borne out from the documents on record no way establishes the claim of the Petitioner to have rendered service continuously from 01.06.2009 till the so-called date of oral termination i.e. 30.06.2015. At the cost of repetition, it would not be out of place to mention that the Petitioner was never issued with any Appointment Letter or Termination Order by the Respondent. Thus, the onus lies on the Petitioner to prove the fact with relevant documents. The documents under Ext.W5 and Ext.W7 disclose that the Petitioner was engaged in Sankakiri Branch in month of July, 2009 as the fact is mentioned by the then Branch Manager in his official capacity. Accordingly, it is accepted that the Petitioner was engaged by the Respondent's Bank in the month July, 2009 and working as Part-Time Sweeper till 21.01.2011 when the recommendation letter was sent by Senior Manager to the Chief Manager (HRD) vide Ext.W7. In this context, even if it is accepted that the Petitioner worked for the above period approximately 16 months, would no way suffice to establish her claim. Besides, for the sake of argument even if it is also accepted that her service was utilized in the year 2014 in view of Ext.W12 to Ext.W14 which adds upto 150 days (August to December), such mere fact of engagement also cannot substantiate to attract Section-25(F) of the ID Act. These Challans pertain to month of August, November and December of 2014 which are certainly not the Wage Vouchers to translate it as her claim that she was in continuous service for that period till her so-called oral termination on 30.06.2015. The fact advanced argument relying on the judicial verdict of the **High Court of Judicature of Madras** in the case of **Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No. 23017/2019 dtd. 06.10.2020**. It is held by their Lordships that *in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence stating that she was terminated from job without prior notice.*

As well as the Petitioner cannot claim her engagement as Part-Time Sweeper for any period of time of 240 days of Calendar Year preceding to her so-called oral termination on 30.06.2015.

In view of the discussions held in preceding paragraphs the Petitioner is not entitled to any relief as sought for. The Issues (iii) and (iv) are also answered against the Petitioner.

Accordingly the Application under 2A(2) is answered against the Petitioner

The ID Case stands dismissed.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 1st June 2023)

DIPTI MOHAPATRA, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Smt. N. Gunasundari
	:	WW2, Sri L. Sankaravadevelu
For the 2 nd Party/Management	:	MW1, Sri Mitra Teja

Documents Marked:-

On the petitioners side

Ex.No.	Date	Description
Ex.W1	19.04.2010	Representation from N.Gunasundari with acknowledge
Ex.W2	27.08.2010	Education qualification for PTS
Ex.W3	28.09.2010	Representation from N.Gunasundari
Ex.W4	28.09.2010	Circular regarding recruitment
Ex.W5	01.10.2010	Certificate of performance in respect of N. Gunasundari
Ex.W6	23.12.2010	Circular regarding recruitment
Ex.W7	21.01.2011	Recruitment of part-time sweeper
Ex.W8	17.02.2014	Regulation regarding absorption of PTS
Ex.W9	22.02.2014	Memorandum for absorption
Ex.W10	24.02.2014	Conversion of PTS as Peons
Ex.W11	04.03.2014	Circular regarding absorption of PTS
Ex.W12	16.08.2014	Cash voucher payment to N.Gunasundari
Ex.W13	05.12.2014	Cash voucher payment to N.Gunasundari
Ex.W14	05.12.2014	Cash voucher payment to N.Gunasundari
Ex.W15	12.02.2015	Education qualification to Peon
Ex.W16	27.05.2015	Letter from General Secretary from the Union
Ex.W17	01.07.2015	Special recruitment trivet of Peon.
Ex.W18	07.02.2016	Demand of Employment after Termination to the Branch Manager by N.Gunasundari
Ex.W19	07.02.2016	Demand of Employment after Termination to the General Manager by N.Gunasundari
Ex.W20	23.08.2016	Reply filed by Management before ALC (C), N.Gunasundari
Ex.W21	31.05.2017	Circular from the General Secretary of the Employees Federation
Ex.W22	-	Relevant portion of 8 th Bipartite Settlement
Ex.W23	-	Relevant portion of 9 th Bipartite Settlement

Documents Marked: On the Respondent side

Ex.No.	Date	Description
Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and Appointment.
Ex.M2	11.02.2012	Circular issued by the Respondent Bank regarding posting of Part-Time Sweepers in the Branch
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the bank.
Ex.M4	21.09.2015	Circular issued by the Bank with regard to the Recruitment and Appointment of Part-Time Sweeper.
Ex.M5	04.07.2016	HRMD Circular Letter dated 10/2016 issued by the Bank with regard to alternative mechanism in lieu of interview for recruitment of Full Time/Part Time Sweeper in Subordinate Cadre.
Ex.M6	28.11.2018	HRMD Circular No.430 Banning the Temporary Appointment in the Bank.

नई दिल्ली, 6 जुलाई, 2023

का.आ. 1181.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगाओ पोर्ट ट्रस्ट के प्रबंधन, संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 मुंबई के पंचाट (24/2020) प्रकाशित करती है।

[सं. एल-36011/02/2020-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 6th July, 2023

S.O. 1181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.24/2020) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mormugao Port Trust and their workmen.

[No. L-36011/02/2020-IR(B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

CAMP: GOA

PRESENT

Laxmi Narain Jindal

Presiding Officer

REFERENCE NO.CGIT-2/24 of 2020

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

MORMUGAO PORT TRUST

(Now : MORMUGAO PORT AUTHORITY

The Chairman

Mormugao Port Trust

(Now: Mormugao Port Authority

Headland Sada

Vasco, Goa.

AND

THEIR WORKMEN.

1. The General Secretary
Mormugao Port & Railway Workers' Union
MPT Administrative Building
Adjacent to Canteen, Headland Sada
Vasco-da-Gama, Goa.
2. The General Secretary
Goa Port and Dock Employees' Union
MPT Administrative Building
Adjacent to Canteen, Headland Sada
Vasco-da-Gama, Goa.

APPEARANCES:

FOR THE EMPLOYER : Ms. H. Barad, Advocate, i/b
M/s. M.V. Kini & Co.

FOR THE UNION NO.1 : Mr. Karim A. Mulla,
Representative.

FOR THE UNION NO.2 **Mr. J.H. Sawant, Advocate.**

Dated the 6th June, 2023.

AWARD

1. This reference has been made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-36011/02/2020 – IR (B-II) dated 02.12.2020. The terms of reference given in the schedule are as follows :

“Whether the proposal of management to discontinue the Relieving Overtime in 33 KV substation and thereby stopping the allowance of the workers working there in the absence of any change in working condition is correct or not? If correct, what about the relieving overtime allowance paid till now?”

2. After receipt of the reference, both the parties were served with the notices. Matter was fixed for filing of Statement of Claim by the unions. Union No.2 Goa Port & Dock Employees Union filed by post an application dated 02.06.2022 withdrawing themselves from the dispute as they are not interested in contesting the matter further.

3. Today Shri Karim A. Mulla, Representative of Mormugao Port & Railway Workers’ Union, i.e. Union no.1, filed an application to the effect that he did not wish to pursue the present reference. His statement was recorded to the following effect:

“It is stated that, I have been authorised by Mr. Ulhas Thanekar, President of the Union to appear today before this Tribunal. It is further stated that the second party no.1 also withdraw the present case and does not intend to contest the dispute.”

4. In view of the above, ‘no dispute’ award is passed in the present reference.

June 06, 2023

LAXMI NARAIN JINDAL, Presiding Officer

Camp : Goa

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1182.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (39/2016) प्रकाशित करती है।

[सं. एल-39025/01/2023-आई आर (बी-II)-21]

सलोनी, उप निदेशक

New Delhi, the 7th July, 2023

S.O. 1182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.39/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023-IR(B-II)-21]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT &

EPF APPELLATE TRIBUNAL

CHENNAI

ID No. 39/2016

Present: DIPTI MOHAPATRA, LL.M.
PRESIDING OFFICER

Date: 05.06.2023

Smt. R. Venkateswari
W/o K. Panneerselvam
No. 44, Parivallal Street
Surumapetti
Erode-638009

: Petitioner

AND

1. The Branch Manager
Punjab National Bank
Kalaimagal Kalvi Nilayam
Erode-638001 : First Respondent
2. The Deputy General Manager
Punjab National Bank
Circle Office (HRD)
Khandha Enclave
179, Sarojini Street
Ramnagar
Coimbatore-641009 : Second Respondent

Appearance:

- For the 1st Party/Petitioner : Advocates, M/s S. Arunachalam & Associates
For the 1st & 2nd Respondent : Advocate, Sri S. Jayaraman

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant raises the dispute challenging the denial of her job as Part-Time sweeper the First Respondent Bank on 30.06.2015.

The case of the Applicant in brief is that she was appointed as Part-Time Sweeper (PTS) in the First Respondent Bank on 02.06.2004. She studied upto 5th Standard. She was all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon with initial remuneration paid on daily basis at the rate of Rs175/-. She was sponsored by the Employment Exchange, Trichy. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job but on the other hand despite of her continuance in job for 11 years and 29 days, the Applicant was denied the job on 30.06.2015 without prior intimation. It is stated that as per the Bipartite Settlement dtd. 19.10.1996 when the Applicant has completed 5 years unblemished service need to be afforded with preference for filling up the Permanent Vacancies. It is further contended that when some vacancies arose the Applicant made oral and written representations to place her on full time job in place of part-time job. Besides, since she has completed continuous service of 480 days in 2 years therefore is entitled to be regularized under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1961. The First Respondent Bank though recommended her name for such post, the Second Respondent did not consider her case, but resorted to direct recruitment of subordinate cadre posts with prescription of higher qualification, age limit, etc. vide publishing necessary advertisement in Tamil Daily i.e. "Thanthi" on 03.12.2014. The advertisement was for filling up of 80 permanent vacancies in Trichy Circle. It is further pleaded that the denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section 2(o) of the ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of her. She raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry on 01.06.2016. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of her reinstatement in service with backwages and all other attendant benefits.

3. Both the Respondents entered appearance by filing Common Counter Statement traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a Workman within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent's Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1984 reached by the All India PNB Employees Federation and the Bank which was circulated vide Circular No. 772 dtd. 17.05.1984 clearly speaks about the procedures to be followed unless Thikana system is prevailed in the particular area. The said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said circular, the Bank had issued another PAD Circular dtd. 72 dtd. 11.02.2012 which also provides for rules regarding the eligibility for posting of Part-Time Sweepers in various branches. It is further contended that no right exists for any person to claim regularization / absorption in Bank which dehors the Bank's Rules and Guidelines. The Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed on 02.06.2004 or terminated from service on 30.06.2015. There was no Service Agreement in

between the Bank and the Petitioner. The claim of the Applicant is not sustainable in the eye of law. The Petitioner / Applicant is not entitled to any relief as sought for.

4. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, R. Venkateswari while examined herself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 32 documents marked as Ext.W1 to Ext.W32. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and produced 6 documents marked as Ext.M1 to Ext.M6.

The pleadings of both parties, brings out the following issues for determination:

- (i) Whether the Applicant is a Workman within the purview of 2(s) of the ID Act.
- (ii) Whether there exists relationship of Employer-Employee in between the Respondent and the Petitioner.
- (iii) Whether the Applicant was terminated without prior notice?
- (iv) To what relief the Applicant / Petitioner is entitled to?

Issues (I) & (II)

5. Since the Issues I & II are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner states to have joined the Respondent Bank on 02.06.2004 as Part-Time Sweeper and all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon. The initial remuneration was paid to her on daily basis at the rate of Rs 175/-. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job. But on the other hand despite of her continuance in job for 11 years and 29 days, the Applicant was denied the job on 30.06.2015 without prior intimation. In view of the Bipartite Settlement dtd. 19.10.1996, the Applicant is entitled to get the preference to fill up the Permanent Vacancy when completes 5 years of service. Her representation in this regard was never considered.

6. WW2 viz. Shri L. Shankaravadivelu, one retired Clerk of Respondent's Bank now holds the post of the General Secretary of "Punjab National Employees Union" which is affiliated to "All India Bank Employees Association" adduces evidence in support of the Petitioner. He categorically states to have rendered 25 years of service in the Respondent Bank till his superannuation in the year 2019. He has direct knowledge that since the engagement of the Petitioner on dtd. 02.06.2004 as a Temporary Employee in the Respondent's Bank, her service was utilized for whole day. The Petitioner was not only doing the menial work such as Sweeping, Cleaning, etc. but was paying Electricity and Telephone Bills, Clearing Cheques and Courier and many more works, as good as the job of a Permanent Employee. But the Applicant was never been paid wages / remuneration at par with a Permanent Employee.

7. The Respondent on the other hand adduces evidence through the Manager (HR), Mitra Teja who denies the pleadings of the Petitioner and the statement of both the Witnesses. In support of the contentions made in Counter Statement, it is stated that the Petitioner cannot plead to project herself as a "Workman" within the purview of Section-2(s) of the Industrial Disputes Act, as much as she was engaged of and on whenever exigencies arose on the part of the local Branch Manager who lacks any authority to give appointment to anyone. The Applicant on the other hand has been adequately paid for her service rendered for the Branch. There exists no Employer-Employee relationship in between the Respondents and the Petitioner. The claim of the Petitioner amounts to backdoor entry thus the claim for reinstatement with back wages is not sustainable.

8. In view of the discussion held in preceding paragraphs with regard to the pleadings of the parties, it is to be seen if the Petitioner is a "Workman" within the purview of the Act and if there exists any Employer-Employee relationship in between the Petitioner and the Respondent. In this context the documents filed by the Petitioner are taken into consideration. It reveals Ext.W1 dtd 19.01.2007 and Ext.W3 dtd. 04.09.2010 are the Representations (in Tamil) of the Petitioner. The Circular for Recruitment of Part-Time Sweeper dtd. 27.08.2010 is Ext.W2. The Branch Manager forwarded the Application dtd. 19.01.2007 of the Petitioner for recruitment of Part-Time Sweeper vide Ext.W4 dtd. 04.09.2010. Ext.W5 dtd. 11.05.2011 is the Interview Call Letter of the Petitioner. A number of documents are under the caption of "Voucher being handled" under Ext.W6 to Ext.W11 for the year 2012 and 2013. Ext.W12 dtd. 17.02.2014 and Ext.W13 dtd. 22.02.2014 are the regulation regarding absorption of PTS and Memorandum for Absorption respectively. The General Secretary circulated a proposal for conversion of Part-Time Employees as Peon vide his letter to All India Punjab National Bank Employees Federation (AIPNBEF) vide Ext.W14 dtd. 24.02.2014. Ext.W15 dtd. 04.03.2014 is an internal communication of a Circular regarding absorption of PTS. Ext.W16 is the Application dtd. 25.04.2014 alongwith Bio-Data of the Petitioner. The Petitioner also furnished the cash vouchers in token of payment of her wages vide Ext.W17 to Ext.W23. A proposal initiated by the General Secretary vide Ext.W24 dtd. 12.02.2015 was sent to the General Manager (P&A) to fix the educational criteria for the post of Peon as minimum 8th Standard instead of 10 + 2. The General Secretary sent a letter to the temporary staff

members on dtd. 27.05.2015 vide Ext.W25 to provide the details in pursuant to Ext.W24. A Special Recruitment Drive was initiated by the Circle Office, Trichy vide Ext.W26 for recruitment to fill the post of Peons in Subordinate Cadre. After termination, the Petitioner moved the Deputy General Manager vide her letters viz. Ext.W27 dtd. 07.02.2016 to consider her on Permanent Post. Ext.W28 is the copy of Ext.W27. Ext.W30 is the Circular dtd. 31.05.2017 issued by the Head Office for recruitment of Workman Staff (other than Godown Keeper). Ext.W31 and Ext.W32 are the extracts of 8th and 9th Bipartite Settlements. After the oral termination as claimed by the Petitioner, she raised the dispute before the ALC. It reveals that the Respondent entered appearance in the Conciliation Proceedings and furnished reply vide Ext.W29 dtd. 30.08.2016 regarding the fact of non-consideration of the Representation dtd. 01.06.2016 of the Petitioner.

9. In view of the discussion held supra, when the engagement of the Petitioner in the Respondent's Bank as a Part-Time Sweeper on 02.06.2004 stands disputed, being thoroughly challenged, the onus of proof heavily lies on the Petitioner. Admittedly, the Petitioner has produced a bunch of documents. Thus, it is to be seen if in order to substantiate her claim of joining / engagement on 02.06.2004, any document is filed. In this context, it needs mention that since it is an admitted fact that the Petitioner was not issued with any Appointment Letter, such plea should have been substantiated by any document other than the oral evidence of WW2. Admittedly, the Petitioner seriously failed to file any scrap of document with regard to her claim of engagement on 02.06.2004. In addition to that, she has failed to furnish any document regarding her continuance. Not a single scrap of document has been filed showing her assignment of any duties, disbursement of wages in any manner i.e. Voucher as against Cash Payment or any Entries in Bank Account Statement till her Representation dtd. 19.01.2007 (Ext.W1). It is pertinent to mention when the Petitioner failed to file any document in support of her claim regarding her continuance from the alleged date of engagement i.e. 02.06.2004 till she made an Application / Representation dtd. 19.01.2007 (Ext.W1). On a close perusal it appears that the then Branch Manager sent the Application / Representation (Ext.W1) of the Petitioner to the Circle Office, Trichy vide Ext.W4 dtd. 04.09.2010 mentioning therein that the Petitioner has been working on Temporary Basis as PTS since 2007. Thus, under the circumstance inference can be drawn that the Petitioner was engaged on Temporary Basis as PTS since 2007 and not from 2004. An Interview Call Letter vide Ext.W5 dtd. 11.05.2011 was sent by Manager (HRD) to the Petitioner, Venkateswari to appear in the Interview at 02.45 PM on 13.05.2011 at the venue fixed. The Petitioner produced some Credit Cash Payment Vouchers under Ext.W6 to Ext.W11 which is not continuous but with intermittent gaps. Only two such Wage Vouchers for the Year 2012 i.e. 02.07.2012 and 01.08.2012 and two Vouchers for the Year 2013 i.e. 02.01.2013 and 01.02.2013 are filed. Besides, the Petitioner also filed some Cash Credit Vouchers relating to her wage in Ext.W17, Ext.W19, Ext.W21 and Ext.W23. Ext.W18, Ext.W20 and Ext.W22 relates to her duty assignments. As such, all these documents Ext.W17 to Ext.W23 necessarily speaks about her engagement and duty assignment in the Bank. Accordingly, it is held that the Petitioner is a "Workman" as defined under 2(s) of the ID Act. In the fact and circumstance, it is held that there exists Employer-Employee relationship in between the Respondents and the Petitioner.

The Issues (i) & (ii) are answered in favour of the Petitioner.

Issues (III) & (IV)

10. The undisputed admitted fact remains that the Petitioner was never issued with an Appointment or Termination Letter by the Respondent. However, the claim of the Petitioner regarding his engagement in the Respondent's Bank on 02.06.2004 is not amply proved by the Petitioner. At the cost of repetition, it needs mention that even if the Petitioner claims to have joined on 02.06.2004 and continued in job till 30.06.2015, she seriously failed to link-up the chain of her continuous engagement for the above period. But the document, the Application/Representation dtd. 19.01.2007 (Ext.W1) and the forwarding letter (Ext.W4 dtd. 04.09.2010) of the Branch Manager are taken into consideration. It reveals from those document that the Petitioner when fails to produce any document to link up her continuance from the claimed date of joining i.e. 02.06.2004 till 2007, this Ext.W1 and Ext.W4 says about her job in the Respondent's Bank, as much as the Branch Manager himself mentioned therein in Ext.W4 that the Petitioner was working as PTS on Temporary Basis since 2007. As such an inference can be drawn that the Petitioner was working therein in the Respondent Bank from 2007 to 2010 till the Branch Manager forwarded Ext.W4 to the Circle Office, Trichy. The Interview Call Letter Ext.W5 and the documents under Ext.W6 to Ext.W11 and Ext.W17 to Ext.W23 are also taken into judicial note. All these documents shows that the Petitioner was engaged on Temporary Basis as Part-Time Sweeper from the period 2007 (Ext.W1 & Ext.W4) till 01.12.2014 (Ext.W23 – Credit Cash Voucher seems to have been paid as Wages to Petitioner PTS) with intermittent gaps. Besides, when the Petitioner contended in her Claim Petition that she was denied job on 30.06.2015, it was the bounden duty of the Petitioner to substantiate this claim with supporting document. Needless to mention, she has seriously failed to furnish any such document showing her continuance after 01.12.2014 (Ext.W23). Therefore, her such claim of continuance in job till 30.06.2015 is not sustainable.

11. On the other hand, in view of the discussions held with regard to the above documents, inference can be drawn that she was working from 2007 to 2014, with intermittent gap, then the onus lies on her to prove that she was

working continuously for 240 days prior to 01.12.2014 (Ext.W23) in a Calendar Year to get the privilege of the Section-25(f) of the Act.

12. The fact emerges in this regard stands disputed as the Learned Counsel for the Respondent raises strenuous objection that the case of the Petitioner does not attract Section-25(f) of the Act. Admittedly, the Wage Vouchers such as Ext.W17 of 02.08.2014, Ext.W19 of 04.10.2014, Ext.W21 of 03.11.2014 and Ext.W23 of 01.12.201 no way proves her claim of continuance. Even if despite of such intermittent gaps, the said period if at all is accepted for the purpose of the case of the Petitioner, it is found that she worked from 02.08.2014 to 01.12.2014 which comes to 121 days. Thus, at any stretch of circumstance, this period from 02.08.2014 to 01.12.2014 cannot attract Section-25(f) of the Act. In this context, the Learned Counsel for the Respondent advanced argument relying on the judicial verdict of the **High Court of Judicature of Madras** in the case of **Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No. 23017/2019 dtd. 06.10.2020**. It is held by their Lordships that in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence. In the instant case, the Petitioner cannot take the privilege contemplated in the legislation under Section-25(f) in any manner either by adducing an illusory evidence that she was terminated from job without prior notice on 30.06.2015 or by producing the document showing her engagement till 01.12.2014. She failed to prove that she was engaged as Part-Time Sweeper for any period of time of 240 days of Calendar Year preceding to both the dates either 01.12.2014 or 30.06.2015.

In view of the discussions held in preceding paragraphs the Petitioner is not entitled to any relief as sought for. The Issues (iii) and (iv) are also answered against the Petitioner.

Accordingly the Application under 2A(2) is answered against the Petitioner
The ID Case stands dismissed.

An award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 05.06.2023)

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Smt. R. Venkateswari
	:	WW2, Sri L. Sankaravadivelu
For the 2 nd Party/Management	:	MW1, Sri Mitra Teja

Documents Marked:-

On the petitioners side

Ex.No.	Date	Description
Ex.W1	19.01.2007	Representation from R. Venkateswari
Ex.W2	27.08.2010	Education Qualification for PTS
Ex.W3	04.09.2010	Representation from R. Venkateswari
Ex.W4	04.09.2010	Certificate of Good Performance given to R. Venkateswari
Ex.W5	11.05.2011	Interview call letter to R. Venkateswari with acknowledgement
Ex.W6	02.07.2012	Voucher being handled by R. venkateswari
Ex.W7	01.08.2012	Voucher being handled by R. Venkateswari
Ex.W8	02.01.2013	Voucher being handled by R. Venkateswar
Ex.W9	01.02.2013	Voucher being handled by R. Venkateswari
Ex.W10	31.06.2013	Voucher being handled by R. Venkateswari
Ex.W11	01.07.2013	Voucher being handled by R. Venkateswari
Ex.W12	17.02.2014	Regulation regarding absorption of PTS
Ex.W13	22.02.2014	Memorandum for absorption
Ex.W14	24.02.2014	Conversion of PTS as Peons
Ex.W15	04.03.2014	Circular regarding absorption of PTS
Ex.W16	25.04.2014	Application with Bio-Data of R. Venkateswari

Ex.W17	02.08.2014	Cash Voucher payment to R. Venkateswari
Ex.W18	01.10.2014	Cash Voucher payment to R. Venkateswari
Ex.W19	04.10.2014	Cash Voucher payment to R. Venkateswari
Ex.W20	04.10.2014	Cash Voucher payment to R. Venkateswari
Ex.W21	21.11.2014	Cash Voucher payment to R. Venkateswari
Ex.W22	05.12.2014	Cash Voucher payment to R. Venkateswari
Ex.W23	05.12.2014	Cash Voucher payment to R. Venkateswari
Ex.W24	12.02.2015	Educational Qualification to Peon
Ex.W25	27.05.2015	Letter from General Secretary from the Union
Ex.W26	01.07.2015	Special Recruitment trivet of Peons
Ex.W27	07.02.2016	Demand of Employment after Termination to the General Manager by R. Venkateswari
Ex.W28	07.02.2016	Demand of Employment after Termination to the General Manager by R. Venkateswari
Ex.W29	30.08.2016	Reply filed by Management before ALC (C), R.Venkateswari
Ex.W30	31.05.2017	Circular from the General Secretary of the Employees Federation
Ex.W31	-	Relevant portion of 8 th bipartite Settlement
Ex.W32	-	Relevant portion of 9 th bipartite Settlement

Documents Marked: On the Respondent side

Ex.No.	Date	Description
Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and Appointment.
Ex.M2	11.02.2012	Circular issued by the Respondent Bank regarding posting of Part-Time Sweepers in the Branch
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the bank.
Ex.M4	21.09.2015	Circular issued by the Bank with regard to the Recruitment and Appointment of Part-Time Sweeper.
Ex.M5	04.07.2016	HRMD Circular Letter dated 10/2016 issued by the Bank with regard to alternative mechanism in lieu of interview for recruitment of Full Time/Part Time Sweeper in Subordinate Cadre.
Ex.M6	28.11.2018	HRMD Circular No.430 Banning the Temporary Appointment in the Bank.

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1183.—आद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधन, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (37/2016) प्रकाशित करती है।

[सं. एल -39025/01/2023-आई आर (बी-II)-22]

सलोनी, उप निदेशक

New Delhi, the 7th July, 2023

S.O. 1183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.37/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-39025/01/2023-IR(B-II)-22]

SALONI, Dy. Director

**ANNEXURE
BEFORE THE CGIT-CUM-LABOUR COURT &
EPF APPELLATE TRIBUNAL**

CHENNAI

ID No. 37/2016

**Present: DIPTI MOHAPATRA, LL.M.
PRESIDING OFFICER
Date: 07.06.2023**

Sri B. Rajkumar

S/o Balakrishnan

Old No. 53, New No. 295, Thirupalthurai

Panayapuram

Thiruvalarsolai Post

Trichy-620005

:

Petitioner

AND

1.The General Manager

Punjab National Bank

Bhikshandar Koil Branch

No. 1, Toll Gate

Trichy-621216

:

First Respondent

2.The Deputy General Manager

Punjab National Bank

Circle Office (HRD)

Trichy-620014

Presently at:

Khandha Enclave

179, Sarojini Street

Ramnagar

Coimbatore-641009

:

Second Respondent

Appearance:

For the 1st Party/Petitioner : Advocates, M/s S. Arunachalam & Associates

For the 1st & 2nd Respondent : Advocate, Sri S. Jayaraman

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

2. The Applicant B. Rajkumar raises the dispute challenging the denial of his job as Courier / Peon by the First Respondent Bank since 03.07.2015.

The case of the Applicant in brief is that he was appointed as Part-Time Courier-cum-Peon in the First Respondent Bank on 01.02.2005 and terminated from job on 03.07.2015 without prior intimation. Since the Petitioner has completed 10 years, 5 months, 2 days unblemished continuous service preference should have been given by the Respondent to him for filling up the Permanent vacancy pursuant to the Bipartite Settlement dtd. 19.10.1996. Besides he has completed his continuous service of 480 days preceding to the date of denial/termination thus is eligible for regularization under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act,

1961. It is further contended that when some vacancies arose the Applicant made oral and written Representations to place him on permanent post. The 1st Respondent sent the Representation with his recommendation to the appropriate Authority, the 2nd Respondent for consideration. The Representation was never considered by the Second Respondent, on the other hand resorted to direct recruitment of subordinate cadre posts for filling of 80 posts in Trichy Circle vide advertisement on dtd 03.12.2014 in Tamil Daily i.e. “Thanthi”. The denial / termination from job of the Applicant, without prior notice amounts to retrenchment within the purview of Section 2(oo) of ID Act. The Applicant / Petitioner was seriously affected financially and mentally for no fault of him. He raised the dispute before the Conciliation Officer – Asstt Labour Commissioner (C), Puducherry. The dispute since could not be resolved at the said forum, the Applicant approached this Tribunal seeking relief of his reinstatement in service with back wages and all other attendant benefits and regularization of his service from the date of his appointment

3. Both the Respondents entered appearance by filing Common Counter traversing almost all the pleadings except the admitted facts. The main plank of contention is that the Applicant / Petitioner is not a “Workman” within the purview of 2(s) of the ID Act. There exists no relationship of Employer-Employee in between the Respondents and the Petitioner. The service condition of the workmen / employees of the Banking Industry including the Respondent Bank are governed by Sastry Award and Desai Award and also various Bipartite Settlements. As per the Respondent’s Bank Rules, the case of the candidates sponsored by the Employment Exchange is only to be considered for such employment. In view of the settlement dtd. 07.05.1984 reached by the All India PNB Employees Federation and the Bank and the same settlement was circulated vide Circular No. 772 dtd. 17.05.1984 which clearly speaks about the procedures to be followed unless the Thikana system is prevailed in the particular area. The said circular also prescribes that the recruitment of Part-Time / Full-Time Sweepers shall be as per the eligibility criteria laid down by the Bank from time to time. In supersession of the said PD circular, the Bank had issued another PAD Circular No. 72 dtd. 11.02.2012 which also provides for Rules regarding the eligibility for posting of Part-Time Sweepers in various branches. It is further contended that no right exists for any person to claim regularization / absorption in Bank which dehors the Bank’s Rules and Guidelines. The applicability of Tamil Nadu Industrial Establishment (Conferment of permanent status to Workmen) Act, 1961 was challenged in view of ID Act. The Respondent(s) specific pleading is that the Petitioner / Applicant was never appointed by any of the Respondent on 01.02.2005 or terminated from service on 03.07.2015. There was no Service Agreement in between the Bank and the Petitioner. The claim of the Applicant is not sustainable in the eye of law. The Petitioner/Applicant is not entitled to any relief as sought for.

4. In support of their respective pleadings, both parties adduced oral as well as documentary evidence. The Petitioner, B. Rajkumar while examined himself as WW1, adduced evidence through one L. Shankaravadivelu as WW2. The Petitioner relied on 31 documents marked as Ext.W1 to Ext.W31. The Respondent examined the Manager (HR), Sri Mitra Teja as MW1 and produced 6 documents marked as Ext.M1 to Ext.M6. The pleadings of both parties, brings out the following issues for determination:

- (I) If the Applicant is a Workman within the purview of 2(s) of the ID Act.
- (II) Whether there exists relationship of Employer-Employee in between the Respondent and the Petitioner.
- (III) Whether the Applicant was terminated without prior notice?
- (IV) To what relief the Applicant / Petitioner is entitled to?

Issues (I) & (II)

5. Since the Issues I & II are interlinked inter alia are taken up together. Both the Witnesses WW1, the Petitioner and WW2 adduced evidence in support of the pleadings of the Claim Petition. The Petitioner states to have joined the Respondent Bank on 01.02.2005 as Part-Time Courier / Peon and all along doing the menial work such as Sweeping, Cleaning and File Stitching, etc. at par with the job profile of a Messenger or a Peon. The initial remuneration was paid to him on daily basis at the rate of Rs 176. But the Respondent never recognized the duties discharged by the Applicant nor was paid with equal time-scale wage at par with regular employees. The Respondent never considered to absorb the Applicant in full time job. But on the other hand despite of his continuance in job for 10 years, 5 months and two days, the Applicant was denied the job on 03.07.2015 without prior intimation. In view of the Bipartite settlement dtd. 19.10.1996, the Applicant is entitled to get the preference to fill up the permanent vacancy when completes 5 years of service. His representation in this regard was never considered. WW2 viz. Shri Shankaravadivelu, one retired Clerk of Respondent’s Bank now holds the post of the General Secretary of “Punjab National Employees Union” which is affiliated to “All India Bank Employees Association” adduces evidence in support of the Petitioner. He categorically states to have rendered 25 years of service in the Respondent Bank till his superannuation in the year 2019. He has direct knowledge that since the engagement of the Petitioner dtd. 01.02.2005 as Temporary Employee in the Respondent’s Bank, his service was utilized for whole day. The Petitioner was not only doing the menial work such as Sweeping, Cleaning, etc. but was paying Electricity and Telephone Bills, Clearing Cheques and many more works, as good as the job of a Permanent Employee. But the Applicant was never been paid wages/remuneration at par with a Permanent Employee.

6. The Respondent on the other hand adduces evidence through the Manager (HR), Mitra Teja who denies the pleadings of the Petitioner and the statement of both the Witnesses. In support of the contentions made in Counter Statement, it is stated that the Petitioner cannot plead to project himself as a "Workman" within the purview of Section-2(s) of the Industrial Disputes Act, as much as he was engaged of and on whenever exigencies arose on the part of the local Branch Manager who lacks any authority to give appointment to anyone. The Applicant on the other hand has been adequately paid for his service rendered for the Branch. There exists no Employer-Employee relationship in between the Respondents and the Petitioner. The claim of the Petitioner amounts to "backdoor entry" thus the claim for reinstatement with back wages is not sustainable. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record.

7. The Counsel for both parties advanced their respective arguments drawing attention to the documents on record. In view of the discussion held in preceding paragraphs with regard to the pleadings of the parties, it is to be seen if the Petitioner is a "Workman" within the purview of the Act and if there exists any Employer-Employee relationship in between the Petitioner and the Respondent. In this context the documents filed by the Petitioner are taken into consideration. It reveals from Ext.W6 that it is an undertaking furnished by the Petitioner to abide the term and condition of his work assignments commencing w.e.f. 19.01.2005. Ext.W7 is the Calculation Sheet towards the Courier charges in respect of the Petitioner which bears the endorsement of the then Branch Manager, N. Venugopal on 31.01.2005 / 01.02.2005. The Petitioner claimed to have been engaged on 01.02.2005. This part of his Evidence is supported by WW2. Sri Shankaravadivelu. Ext.W12 dtd 17.02.2009 is the letter of Branch Manager to the Senior Manager (Audit), Trichy to enhance the limit of Clearing / Courier Charges in respect of the Petitioner. Ext W13 dtd 26.03.2009 is the approval of the proposal by the Authority, communicated by Senior Manager to the Manager, Branch Office, Bhikshandarkoil regarding the enhancement of the charges to Rs 1400/-. Again vide Ext.W14 dtd 21.06.2012, the Senior Manager initiated another proposal requesting to the Senior Manager (Inspection and Audit), Circle Office, Trichy to enhance the Clearing Conveyance charges of the Petitioner and the same was approved by the Competent Authority. The same was communicated by the Senior Manager vide Ext.W15 dtd 14.08.2012 addressed to the Chief Manager, Bhikshandarkoil regarding the approval of the proposal by enhancing the Clearing Conveyance charges from Rs. 1400/- to Rs 2000/- The Petitioner files his PNB Bank Statements showing the disbursement of his remuneration / dues vide Ext W21 (consisting 7 Sheets). The PNB Account Statement reflects the entries 02.01.2013 to 23.04.2014.

8. Thus, those documents under Exhibits also speak in support of the case of the Petitioner. In this context, even if the Respondent's argument is taken into consideration, that the petitioner was engaged temporarily by the Local Branch Managers, as and when required, it can also be well presumed that the Petitioner was engaged temporarily since 2005 till 2014 with intermittent gap. No document has been filed in support of the continuity of engagement of the Petitioner from 01.02.2005 till 2009 in view of Ext.W12. The documents Ext.W12 to Ext.W15 discloses the Petitioner was engaged in 2009 and continued till 2014. This fact is well established with further documents i.e. Ext W21, the Bank Statement (entries made from 02.01.2013 till 23.04.2014 and his Representation Ext.W22 (in Tamil) dtd 08.05.2014. The said representation being enclosed with his Bio-Data (Ext.W23) regarding his Educational Qualification, sent to the Assistant General Manager, Punjab National Branch, Regional Office, Trichy requesting for his engagement as against Permanent Post, claiming to have served for 10 years.

9. In view of the discussion held supra, when the engagement of the Petitioner by the Respondent as a Part-Time Employee on 01.02.2005 (in view of Ext.W6) stands undisputed, the Petitioner amply proves that he was assigned with the work of Courier (in view of Ext.W7). Besides, the letters of request for enhancement of Courier Charges and Clearing Conveyance Charges and the approvals from Appropriate Authority (vide Ext.W12 to Ext.W15), it is held that it established that the Petitioner is a "Workman" as defined under 2(s) of the ID Act. It is also an admitted fact that even though the Petitioner fail to link up the chain to prove his continuity in Temporary Post from the date of joining i.e. 01.02.2005 till 2009, the documents as stated above establishes that his engagement is in continuation till 2014 in view of Ext.W21. The claim of the Petitioner regarding the disbursement of the remuneration / dues by the Respondent's Bank credited to his Bank Account for the period from 02.01.2013 to 23.04.2014 stands undisputed since not being challenged by the Respondent. In the fact and circumstance, it is held that there exists Employer-Employee relationship in between the Respondents and the Petitioner.

The Issues (i) & (ii) are answered in favour of the Petitioner.

Issues (III) & (IV)

10. At the cost of repetition, it needs mention that the Petitioner relied on several documents relating to the internal correspondences made by the General Secretary, AIPNBEF to General Manager (Personnel and Administration) requesting to follow the Desai Award vide Ext.W16 dtd 17.02.2014. The Petitioner while claiming reinstatement and backwages relied Ext.W17, the MoU dtd. 22.02.2014 arrived in between the Respondent's Bank and the AIPNBEF. The Learned Counsel emphasizes basing on the terms of Ext.W17, the Petitioner made a Representation vide Ext.W22 being enclosed with the Bio-Data vide Ext.W23 showing the Petitioner to have failed Class-X. The argument

advanced by the Learned Counsel for the Petitioner in this regard that when the Petitioner has completed more than 8 years of service from the date of his joining, he should have been posted against a Permanent Post. It is pertinent to mention in view of the discussion in Issue No. I and II, it is held that the Petitioner has seriously failed to show the continuity of his job from the date 01.02.2005 till 2009 when the Branch Manager moved the higher Authority for enhancement of the Courier Charges, etc. The continuity of his engagement has been held by this Tribunal from the period 2009 to 2014 which amounts to 5 years. Para-6 of Ext.W17 says that an employee in Subordinate Cadre including Part-Time Employees in Subordinate Cadre (after conversion of their service into Full-Time) shall be eligible to be considered for promotion to the Clerical Cadre (Sub-Clause IV) when a Non-Matriculate with 8 years of service. As such the Petitioner has not fulfilled the criteria of eligibility either by length of service or by the term of Para-6 of Ext.W17.

11. At the outset, the Learned Counsel for the Respondent in his Common Written Argument emphatically stated that in absence of any cogent and candid evidence the Petitioner cannot claim the continuity of service till the alleged date of oral termination on 03.07.2015. He pressed into service the judicial verdict of the **High Court of Judicature of Madras** in the case of **Sri J. Alwin Edwin Vs. The Branch Manager, Punjab National Bank and Two Others vide WP No. 23017/2019 dtd. 06.10.2020**. It is held by their Lordships that “*in the absence of any candid document, the Petitioner cannot seek relief on an illusory evidence*”.

It is further submitted that the Petitioner has not fulfilled the criteria of eligibility either by length of service or by the term of Para-6 of Ext.W17. His service was not converted to Full-Time service (as per Ext.W17). Accordingly, the Petitioner cannot take advantage under Ext.W17.

It is an admitted case of both the parties that the Petitioner was never issued with any Written Order of Termination. Thus, onus lies on the Petitioner to prove the continuity of his engagement till the date of his alleged oral termination / disengagement on 03.07.2015. But such contentions of disengagement of the Petitioner on 03.07.2015, is not substantiated in any manner by the Petitioner. Not a single scrap of document in this regard either relating to his assignment, payment of any remuneration / dues or any entitlements has been filed him to establish his claim of continuity from 03.04.2014 till 03.07.2015.

12. In view of the discussion held supra, it is found that when the Petitioner well establishes his claim of engagement on 01.02.2005 as Part-Time Courier under the Respondent Bank at Bhikshandarkoil vide Ext.W6 and Ext.W7, fails to produce a single scrap of document to prove the continuity of his engagement till 2009 and his continuation from 03.04.2014 to the alleged date of termination of 03.07.2015. At the outset it is to seen how the Petitioner tries to establish his case by producing the documents. On going through the documents i.e. Ext.W12, Ext.W15 and Ext.W21, it reveals that the Petitioner was working under the Respondent from 2009 to 2014. Ext.W12 is the letter of the Branch Manager communicated to the Senior Manager (Audit) vide letter dtd. 17.02.2009 to enhance the courier charges of the Petitioner. Ex.W14 is similar proposal made by the Senior Manager to the Senior Manager (Inspection and Audit Section) vide letter dtd. 21.06.2012 to enhance the clearing conveyance of the Petitioner. Ext.W15 is the approval dtd. 14.08.2012 of the higher authority to the proposal initiated in Ext.W14. In order to substantiate further continuance, the Petitioner well established his claim by furnishing the Bank Statement under Ext.W21. This Bank Statement pertains to the period 02.01.2013 to 03.04.2014. The credit entries disclose that the Petitioner was disbursed with an amount of Rs. 1,500/- towards Courier Charges and sometimes Rs. 1,000/- or Rs. 800/- likewise towards Clearing and Conveyance charges respectively. This Bank Statement under Ext.W21 stands undisputed since not been challenged. At the outset, the Petitioner failed to produce any document to link up the chain of his claim to have worked till the alleged date of oral termination on 03.07.2015 as not supported with any candid or cogent evidence thus his plea cannot be accepted that he was disengaged / refused work on 03.07.2015. But at the same time, the documents under Ext.W21 as discussed above just cannot be brushed aside. In the peculiar circumstance, inference can be drawn (in view of the entries reflected in Ext.W21) that the Petitioner was disengaged on 03.04.2014, as no further entries were made available in the Bank Account. Since both the parties failed to produce any notice of termination / disengagement, the last entry in Ext.W21 i.e. 03.04.2014 is necessarily taken into account that the Petitioner was disengaged without prior notice or notice pay which amounts to termination. Such disengagement undoubtedly might have caused severe financial hardship to the Petitioner to maintain his livelihood as well as such act of the Respondent Management at the middle age of a Petitioner certainly would have also caused mental agony. Such abrupt action of the Respondent Management is found unethical, illogical and defeats the principles of natural justice.

13. Now it is to be seen if the Petitioner had rendered service of 240 days continuously in the Calendar Year preceding to his disengagement / refusal of work on 03.04.2014. At the cost of repetition for the purpose of the discussion, it needs mention that this Tribunal drew inference that the Petitioner was working for the Respondent for the period 2009 to 03.04.2014. The Ext.W21 pertains to the period from 02.01.2013 to 03.04.2014, which is necessarily for a period of 240 days attracting 25F of the Act. These fact of Bank entries under Ext.W21 with regard to the disbursement of Courier, Conveyance and Clearing charges was not challenged in any manner by the Respondent. Thus stands undisputed in favour of the Petitioner. In that case, the disengagement on 03.04.2014 (as

revealed from Ext.W21) of the Petitioner by the Respondent could have been done with a prior notice with notice pay. The Respondent is found to have violated the principles of natural justice in this regard.

14. In view of the discussions held in preceding paragraphs, since the Petitioner was employed on a Temporary Post and the post was never been converted to a Permanent Post, it would be impossible on the part of the Respondent to reinstate the Petitioner as the relief sought for. In the circumstance, in lieu of backwaages, the Petitioner is entitled to be compensated with a lumpsum amount of Rs. 1,50,000/- (Rupees One lakh Fifty thousand only) which would best serve the purpose.

The Issues (iii) & (iv) are answered in favour of the Petitioner.

The ID stands allowed.

15. In the result, the Respondent is directed to pay Rs. 1,50,000/- (Rupees One lakh Fifty thousand only) as compensation in lieu of backwage to the Petitioner, Sri B. Rajkumar within a period of two months from the date of notification in the Gazette, failing which the Respondent is liable to pay 9% of Interest on it from the date of Order till the date of payment.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 07.06.2023)

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Sri B. Rajkumar
	:	WW2, Sri L. Sankaravadelu
For the 2 nd Party/Management	:	MW1, Sri Mitra Teja

Documents Marked:-

On the petitioners side

Ex.No.	Date	Description
Ex.W1	04.11.2004	Letter from Asst. General Manager
Ex.W2	03.01.2005	Minutes of clearing House Members Meet
Ex.W3	05.01.2005	Letter from Senior Manger change of clearing time.
Ex.W4	12.01.2005	Decisions taken in the Branch Managers meet
Ex.W5	13.01.2005	Change of clearing time.
Ex.W6	19.01.2005	Undertaking furnished by B.Rajkumar
Ex.W7	31.01.2005	Salary fixed to B.Rajkumar
Ex.W8	12.12.2005	Enhancement of clearance conveyance
Ex.W9	30.07.2008	Setting time for clearance
Ex.W10	02.01.2009	Enhancement of clearance conveyance
Ex.W11	16.02.2009	Request from Manager Enhancement of Clearance Conveyance
Ex.W12	17.02.2009	Request from Manager Enhancement of clearance conveyance to B.Rajkumar
Ex.W13	26.03.2009	Enhancement of clearance Conveyance

Ex.W14	21.06.2012	Enhancement of clearance conveyance
Ex.W15	14.08.2012	Enhancement of clearance conveyance
Ex.W16	17.02.2014	Regulation regarding absorption of PTS
Ex.W17	22.02.2014	Memorandum for absorption
Ex.W18	24.02.2014	Conveyance of PTS as Peons
Ex.W19	04.03.2014	Circular regarding absorption of PTS
Ex.W20	15.03.2014	Chief Manager forwarding the application of B.Rajkumar
Ex.W21	03.05.2014	Pass Book entries B.Rajkumar
Ex.W22	08.05.2014	Application from B.Rajkumar
Ex.W23	09.05.2014	Biodata of B.Rajkumar
Ex.W24	12.02.2015	Educational qualification to Peon
Ex.W25	27.05.2015	Letter from General Secretary from the Union
Ex.W26	01.07.2015	Special Recruitment trivet of Peon.
Ex.W27	07.02.2016	Demand of Employment after Termination to the Branch Manager
Ex.W28	07.02.2016	Demand of Employment after Termination to the General Manager by B.Rajkumar.
Ex.W29	31.05.2017	Circular from the General Secretary of the Employees Federation
Ex.W30	-	Relevant portion of 8 th bipartite settlement
Ex.W31	-	Relevant portion of 9 th bipartite settlement

On the Respondent side

Ex.No.	Date	Description
Ex.M1	07.05.1984	Settlement regarding fixation of wages and other Allied matters like Recruitment and Appointment.
Ex.M2	11.02.2012	Circular issued by the Respondent Bank regarding posting of Part-Time Sweepers in the Branch
Ex.M3	25.03.2014	Circular banning the Temporary Appointment in the bank.
Ex.M4	21.09.2015	Circular issued by the Bank with regard to the Recruitment and Appointment of Part-Time Sweeper.
Ex.M5	04.07.2016	HRMD Circular Letter dated 10/2016 issued by the Bank with regard to alternative mechanism in lieu of interview for recruitment of Full Time/Part Time Sweeper in Subordinate Cadre.
Ex.M6	28.11.2018	HRMD Circular No.430 Banning the Temporary Appointment in the Bank.

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1184.—आद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (30/2008) प्रकाशित करती है।

[सं. एल-12012/14/2008-आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 7th July, 2023

S.O. 1184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.30/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L-12012/14/2008-IR(B.II)]

SALONI, Dy. Director

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW****PRESENT****JUSTICE ANIL KUMAR****PRESIDING OFFICER**

I.D. No. 30/2008

Ref. No. L-12012/14/2008-IR(B-II) dated 12.05.2008

BETWEEN

Shri Ravi Kunj S/o Shri Mohan Lal

204, Chander Nagar, New Basti, Dehradun

AND

The Regional Manager, Punjab National Bank, Regional Office, Clock Tower Dehradun

AWARD

By order No. L-12012/14/2008-IR(B-II) dated 12.05.2008 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

“Whether the action of the management of the Punjab National Bank in Termination/Disengaging Shri Ravi Kunj w.e.f. 12-06-2007 from his engagement as Sweeper-cum-Peon is legal & justified? If not, to what relief the concerned person is entitled?”

Accordingly, an industrial dispute No. 30/2008m registered on 23.05.2008.

On 02.06.2008, statement of claim has been filed by the claimant and in brief the facts which are stated by the claimant therein are as under:

- (a) Claimant was engaged initially as part time sweeper in the branch of Punjab National Bank in the Welham Girls Scholl, Dehradun.
- (b) After rendering services as part time sweeper in the said branch, from 12.08.2006, he was discharging duties of sweeper in the Race Course Branch, of Punjab National Bank, Dehradun.
- (c) In addition to the work of sweeper, he was discharging the duties of opening the lock and closing the bank and work of peon was also taken form him and been paid Rs. 3400/- per month towards his salary.
- (d) on 25.05.2007, the respondent No. 2 wrote a letter dated 25.05.2007, thereby recommending that services of the workman to made permanent; however, no heed has been paid in this regard.
- (e) And by order dated 12.06.2007, his services were retrenched on one hand and on the other hand services of Smt. Kailash & Ajay Kumar, part time sweepers in the same branch were retained.

Accordingly, it is prayed by the claimant that as he was retrenched in violation of the provisions of section 25 F of the Industrial Disputes Act 1947, so the same be set aside and he may be reinstated in services, with back wages and

respondent may also be directed to pay the wages of the period 01.06.2007 to 12.06.2007 which has not been paid to him.

On behalf of the on 17.12.2008 a written statement was filed in which a preliminary objection was taken, relevant points are reproduced hereunder:

"1. That it is submitted that there was no employer and employee relationship between the Bank and Shri Ravi Kunj and accordingly, it is submitted that so called dispute raised by Shri Ravi Kunj does not constitute an Industrial Dispute, as defined under the provisions of Industrial Disputes Act, 1947.

2. That the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and other Vs Umadevi and others (JT 2006(4) SC420) has held that merely because a temporary employee is continued for a time beyond the terms of appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made in terms of the relevant rules."

Further, in the written statement, it has been submitted by the Bank that one Shri Ajay Kumar was working as Part Time Sweeper at Branch Office: Race Course, Dehradun in 3/4th Scale of wages since 01.01.1998. Shri Ajay Kumar was promoted to Peon in Subordinate Cadre on 12.08.2006 and was later on given posting at Branch Office: Koti Kanasar w.e.f. 14.08.2006. Shri Ravi Kunj was engaged by the bank in leave gap arrangement".

The Bank has further stated that Shri Kunj was engaged by the Bank only in leave gap arrangement for sweeping the area of BO: Race Course w.e.f. 14.08.2006 and his engagement was discontinued from work w.e.f. 11.06.2007; and was used to be made payment for the number of days he worked and the same was paid through the salary bills.

And claimant was engaged in leave gap arrangement and by virtue of Section 2(00)(bb) of the ID Act, the engagement of workman/claimant was discontinued so does not constitute retrenchment. As such, the question of giving permanent employment to claimant does not arise.

It is specifically pleaded on behalf of the Bank that the claimant was engaged in leave gap arrangement and was paid remuneration for the number of days he worked. He was never appointed in any vacant post by following the procedure of recruitment, as per recruitment rules of the Bank. He was only engaged by the bank in leave gap arrangement", pending filling up of the post of PTS on 3/4th wage scale at BO: Race Course, Dehradun in terms of Conciliation Settlement dated 07.05.1984 on the basis of town-wise seniority of the existing permanent PTSs, so there is no violation of any provision of law i.e. provision of Section 25 F of ID Act, as the same is not applicable to the facts of the case.

Further, it has been pleaded in written statement that Smt. Kailasho at Branch Office, Race Course in 3/4th Scale was done as per the settlement signed by the Management, before the, Regional Labour Commissioner(C), New Delhi, on 07.05.1984. Shri Ajay Kumar & Smt. Kailasho were posted against the sanctioned vacancies which were filled on the basis of town-wise seniority of the existing PTSs, determined by converting the services put in at 1/3, 1/2, or 3/4th of the scale wages into full time services. However, the claimant was only engaged in leave gap arrangement and was paid remuneration for the number of days he worked.

Accordingly, it has been submitted by the respondent that the claim of the claimant be rejected being devoid of any merit.

On 15.10.2009, rejoinder has been filed by the workman, supported by affidavit.

Thereafter, the documents between the parties have been exchanged.

In order to support his case, the workman has filed his evidence on oath (W-36) on 05.02.2011, he was cross-examined on 25.11.2011.

Management in support of his case, has field evidence of Sri Bharat Bhushan Chopra, Chief Manager and Sri R.K. Bajpai, Chief Manager. Sri R.K. Bajpai whose evidence was field and is on record as M-35, was cross-examined on 10.12.2014.

The matter was taken up at Camp Dehradun on 17.03.2023, in revised list, on one was present on behalf of the workman, in spite of the fact that notices were duly served on him.

Needless to mention herein that from perusal of record, position which emerges out that on behalf of the claimant a written argument has been filed (W-27) is on record; and in the written argument, argument taken by workman that on 12.08.2006 he was appointed as sweeper in the sweeper in the branch of Punjab National Bank in the Welham Girls Scholl, Dehradun and from 12.08.2006 he is regularly discharging duties of sweeper in the Race Course Branch, of PNB, Dehradun. It is also submitted that in addition to the work of sweeper, opening the lock and closing the bank, work if peon after banking hours was also taken from him and for the said purpose, he has been paid Rs. 3400/- per month. The respondent no. 2 wrote a letter dated 25.05.2007, thereby recommending the services of the workman to made permanent; however, no heed has been paid in this regard; however, by order dated 12.06.2007, his services were retrenched, retaining Smt. Kailash & Ajay Kumar, part time sweepers appointed in the same branch.

And in addition to above said facts following plea were also stated in the written argument:

1. यह कि वादी द्वारा एक कलैण्डर वर्ष में लगातार 240 दिन से भी अधिक दिन कार्य पार्ट टाइम चपरासी बिना किसी रुकावट के किया गया।
2. यह कि वादी वर्तमान याचिका दाखिल होने से पूर्व लगातार आठ वर्ष वैल्हम गर्ल्स स्कूल की पंजाब नेशनल बैंक शाखा में कार्य कर चुका था तथा उसके पश्चात दिनांक 12-08-2006 से 11-06-2007 तक रेसकोर्स शाखा पंजाब नेशनल बैंक में कार्य किया गया।
3. यह कि प्रतिवादीगण द्वारा अपने जवाबदावे में वादी के कथनों की अस्वीकारोक्ति कहीं नहीं की गई है, केवल सैकेटरी स्टेट ऑफ कर्नाटका व अन्य बनाम उमा देवी व अन्य के केस जे. टी. 2006 (4) एस.सी. 420 के बाद के तहत यह कथन किया गया है कि केवल लगातार कार्य किये जाने के कारण यादी स्थायी नौकरी का हकदार नहीं बन जाता है।
4. यह कि वादी का बाद स्टेट ऑफ कर्नाटका बनाम उमा देवी व अन्य के केस की परिधि से बाहर है तथा वादी के केस के तथ्य उक्त बाद में भिन्न है, जिस कारण स्टेट ऑफ कर्नाटका बनाम उमा देवी व अन्य में प्रतिपादित कानून वादी केस पर लागू नहीं होते हैं।
5. यह कि वादी पार्ट टाइम कर्मचारी होने के कारण धारा 2(s) औद्योगिक विवाद अधिनियम के अंतर्गत आता है तथा धारा 25-बी लगातार सेवा तथा धारा 25-एफ औद्योगिक विवाद अधिनियम के तहत लाभ प्राप्त करने का पूर्ण रूप से अधिकार है। माननीय उच्चतम न्यायालय द्वारा भी वर्ष 2008 (4) CCC 214 SC में स्पष्ट किया गया है कि:-

"A part time workman would be covered within the definition in section 2 (S) of the Act and thus he would be entitled to the benefit of continuous & service under section 25(B) and benefit of section 25F."

6. यह कि वादी द्वारा अपने बाद पत्र के साथ भारत सरकार श्रम मंत्रालय का पत्र दिनांक 12-05-2008 तथा उसमें पारित ऑर्डर लगाया गया है जिसके तहत निम्न याद बिन्दु बनाया गया था जिस पर ही माननीय न्यायालय को अपनी finding देनी है जो निम्न है:-

"Whether the action of the management of the Punjab National Bank in Termination/Disengaging Ravi Kunj w.e.j. 12.06.2007 from his engagement as sweeper cum peon is legal & justified? If not to what relief the concerned person is entitled?"

7. (ए) यह कि दादी को चूंकि नौकरी से बिना नोटिस, क्षतिपूर्ति दिये बिना, कानून के विपरीत हटाया गया जिस कारण वादी Re- instatement तथा Full back wages प्राप्त करने का अधिकारी है।
8. (बी) यह कि वादी को स्वीपर-कम- चपरासी का कार्य दिया गया। यह प्रतिवादीगण द्वारा अपने प्रतिवाद पत्र में पहले ही स्वीकार कर लिया गया है जिस कारण उक्त पहलू पर प्रतिवादीगण को कोई आपत्ति नहीं है।"

Along with written argument, the copy of judgment, passed by the Hon'ble Apex Court, in the case of Div. Manager, New India Assurance Co. Ltd. v. A. Sankaralingam 2008 (4) CCC 214 has been annexed.

Sri U.K. Bajpai, on behalf of the respondents after placing reliance on the facts stated in the written statement and documents which were filed on behalf of the respondent submits that the claimant, Ravi Kunj worked as and when work arises, so, for the said purpose, the services of Ravi Kunj were availed by the Branch of Race Course Branch of PNB and for which he has been paid wages/remuneration.

He further submits that so far as the case taken by the claimant in in his claim petition that a recommendation has been issued is concerned, the same letter reads as under:

"Reg: Part Time Sweeper.

Part Time Sweeper, Sri Ajai Kumar on promotion to class IV employee as peon was transferred from this office on 12.08.2006. Since then Sh. Ravi Kunj Sweeper of this area is working the cleaning job of Bank Premises.

Sh Ravi Kunj has submitted his biodata as under

Date of birth	30.05.1985
Father's name	Shri Mohan Lal
Address	Chander Road, Nai Basti Dehradun
Equational equalization	Class IV pass.

We recommend that Sri Ravi Kunj may be given the job of Part Time Sweeper permanently.”

Sri U.K. Bajpai, learned counsel for respondent accordingly, submitted that from the said letter claimant cannot derive any benefit as the petitioner's engagement was part time sweeper and was not engaged as per the Rules and Regulation by which a person is engaged in the bank, so, by said letter he cannot get any benefit in view of the law as laid down by the Hon'ble Apex Court in the case of *Secretary, State of Karnataka & others v. Umadevi & others* 2006 (4) SC 420.

Sri U.K. Bajpai further submits that claimant, Ravi Kunj cannot take any benefit of parity from the facts in regard to retaining Ajay Kumar and Smt. Kailash, as the said persons are appointed against sanctioned vacancies, whereas the claimant is only a part time sweeper.

Lastly, Sri U.K. Bajpai has place reliance on the judgment passed by a coordinated bench of this Tribunal at Delhi dated 05.02.2019 in industrial dispute case no. 72/2013 General Secretary, Punjab National Bank Workers Union vs. Manager, Punjab National Bank, Dehradun and another.

Accordingly, it is submitted by Sri Bajpai that present claim petition lacks merit, liable to be dismissed.

I have heard Sri U.K. Bajpai, learned counsel for respondent and gone through the pleading and other material on record, relied upon by the parties.

First point of consideration:

Preliminary objection has been taken on behalf of the respondent that there was no employer and employee relationship between the Bank and Sri Ravi Kunj; so, dispute raised by Sri Ravi Kunj does not constitute an 'industrial dispute' as defined u/s 2'k' of the Industrial Disputes Act, 1947.

In order to decide the same, it is relevant to state that on behalf of the claimant it is pleaded that he was initially appointed as Peon in Welham Girls School, after working there for eight years he was transferred on 12.08.2006 to Race Course branch of the Bank and for the said purpose he has been paid Rs. 3400/- per month. It is further submitted by the workman that on 25.05.2007 a letter was written by Regional Manager, PNB, Dehradun inter alia stating therein that the claimant is Part Time employee in the said branch of the bank and recommended his case that his services may be made permanent, the said letter is quoted hereinabove.

On 12.06.2007 services of the workman were terminated.

Further, in the present case on behalf of the workman evidence in the shape of affidavit has been filed on 05.02.2011, in which he has once again repeated the above said facts and on 25.11.2011 he was cross-examined by the counsel for respondent and in the said cross-examination he has stated as under:

“Prashn: uprokt kaam ke liye aapko kya tankhwah milti thi.

Uttar: 1998 main 800/- Race Course mein 3400/- rupye milta tha.

Prashn: koi statement daakhil kiya hai.

Maine tankhwah ke sambandh main Bank Statement file kiya hai.

Prashn: 25.5.07 ka jo letter hai vah Part Time Sweeper ki recommendation hai, kya sahi hai.

Uttar: Jee han.”

On behalf of the respondent, in support of its case, affidavit of one Sri R.K. Bajpai, the then Chief Manager of PNB, Circle-1, Dehradun had been filed. In his affidavit he has stated following facts:

“4. That Shri Ravi Kunj was engaged in leave gap arrangement and by virtue of section 2(00)(bb) of the ID Act, the discontinuance of his engagement does not constitute retrenchment. As such the question of giving Shri Ravi Kunj permanent employment does not arise.

5. That letter dated 25.05.2007, if any, would not create any legal right in favour of Shri Ravi Kunj. It is reiterated that vacancy at BO: Race course, Dehradun was required to be filled up in terms of conciliation settlement dated 07.05.1984.

6. That the contention of Shri Ravi Kunj is misconceived, false and denied as no employment, either temporary or permanent, was provided to Shri Ravi Kunj. Shri Ravi Kunj was only engaged in leave gap arrangement and was paid remuneration for the number of days he worked. He was never appointed in any vacant post by following rules of the Bank. He was only engaged by the Bank “in leave gap 05/01/201angement”, pending filling up of the post of PTS on 3/4th wage scale at BO: Race Course, Dehradun in terms of Conciliation settlement dated 07.05.1984 on the basis of town - wise seniority of the existing permanent PTSs. It is denied that in discontinuance of engagement of Shri Ravi Kunj, there has been violation of any provision of law. It is further submitted that provisions of section 25F of ID Act are not applicable to the facts of the case.”

And during his cross-examination on 10.12.2014 he further admitted as under:

“Mujhe pata nahi ki PNB ki shakhaon main Ravi Kunj ne kab se kab tak karya kiya.

Leav Gap Arrangment ka record bank main hoga.

Mujhe nahi pata ki Sri Ravi Kunj ne 1998 main Melham Girls School, PNB, shakha main karya kiya athva nahi.

Mujhe jaankaari nahi hai ki 25/5/2007 ko Regional Manager, PNH ne Ravi Kunj ko sthai karne ki sanstuti ki.

Abhilekh 2/27 jo chhaya prati hai bank manager ne Sr. Regional Manger ko likha hoga jismein shri Ravi Kunj ko Part Time Sweeper ki job dene ki sanstuti ki hai.

Abhilekh sankhya 2/12 se 2/14 sekh kar gavah ne kaha yah abhilekh chhaya prati hai, main yah nahi bata sakta ki yah kis bank adhikaari ke hastakshar hain aur iski kya pramanikta hai.

Sri Ajay Kumar ko bank main sthyai pad yadi diya gaya hai to Bank ki policy ke tahat diya gaya hai.

Shrimati Kailasho ko anshkalik safaikari ke pad par niyukti bank ki policy ke tahat ki."

Taking into consideration the above said factual background and law as laid down by the Hon'ble Apex Court in the case of *Div. Manager, New India Assurance Co. Ltd. vs. A. Sankaralingam* 2008 (4) CCC 214 (SC); wherein it has been held as under:

"3. Shri Atul Nanda, the learned Counsel for the appellant has first and foremost argued that the finding of fact arrived at by the High Court as to the status of the workman was incorrect inasmuch as that in the application filed by the respondent on 30th May 1989 praying that his service be regularized, he had identified himself as a part-time Sweeper-cum-Water Carrier and in this background to hold that he was working on full-time basis was contrary to the record. It has also been pointed that as per application dated 23rd September 1991 addressed to the appellant by the President of the District Committee for legal aid, the workman had been employed only as a part time Sweeper. It has further been submitted that the respondent was not entitled to the benefit of Section 25F of the Act as he was not a workman within the meaning of Section 2(s) thereof as in common understanding, a day must include a full day's work and not a part time employment. He has in this connection referred us *Shankar Balaji Waje v. State of Maharashtra* (1962)ILLJ119SC in which the scope of Section 79 of the Factories Act was under consideration to plead that as this provision was analogous to Section 25B of the Act in so far as the requirement of 240 days of employment was concerned, the workman was not entitled to any relief. He has also pointed out that this Court in *Uttaranchal Forest Hospital Trust v. Dinesh Kumar* (2007) 13 SCALE 499 and in *Ram Lakhan Singh v. Presiding Officer, Labour Court, Chandigarh* 1989 Labour Industrial Cases 1650, had considered the status of a part-time Sweeper, (as in the present case) and had held that such an employee could not claim the benefit of Section 25 F of the Act.

4. As against this Mr. S.Guru Krishna Kumar, the learned Counsel for the workman has submitted that the reference made to the Industrial Tribunal did not raise a question as to the part-time or full time employment of the workman and the learned Single Judge and the Division Bench having both held on facts in his favour, no interference was called for in this appeal. He has also urged that Section 2(s) which defined a "workman", and Section 25B which talked of 'continuous service' did not make any distinction between a part-time and full time employee and if the Legislature intended to draw a distinction between the two categories, the definition would have been in different and positive terms. The learned Counsel has also pointed out that this Court in *Shri Birdichand Sharma v. First Civil Judge, Nagpur and Ors.* (1961)ILLJ86SC and in *Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops & Establishments and Anr.* (1973)ILLJ495SC, had conclusively held that there was absolutely no distinction between a full time and part-time employee and that a workman who was working part time would not lose his status as a workman if he was employed with more than one employer. It has also been submitted that preponderance of judicial opinion of various High Courts was in favour of the above proposition of law and has cited:

(a) *Govind Bhai v. N.K. Desai* (Gujarat High Court) 1988 Lab I.C. 505 (para 6)

(b) *Yashwant Sinha Yadav v. State of Rajasthan* (Rajasthan High Court) 1990 Lab I.C. 1451 (para 9 to 15)

(c) *Rajaram Rokde & Bros. v. Shriram* (Bombay High Court) 1977 Lab I.C. 1594 (following the decision in *Silver Jubilee case supra* - paras 2 & 5)

(d) *Dr. P.N. Gulati v. Labour Court, Gorakhpur* (Allahabad High Court) 1977 Lab I.C. 1088

(e) *Simla Devi v. Presiding Officer* 1997 (1) LLJ 788

(f) *G.M. Telecom, Nagpur v. Naresh Brijlal Charote and Anr.* 2001 LAB I.C. 2127 Bombay High Court (at para 11)

(g) *Coal India v. P.O. Labour Court* 2001-II-LLJ 45 Delhi High Court (pat paras 7 and 8)

(h) *Kailash Chand Saigal v.Om Prakash and Ors.* (2007)ILLJ144Del Delhi High Court (at paras 5 & 6)

5. We have heard the learned Counsel for the parties and gone through the record. It will be seen that the Single Bench and the Division Bench of the High Court have both on a consideration of the oral evidence as well as on the documentary record, and on admissions made in evidence given categorical findings of fact that the respondent had worked till about 5 p.m. every day but even otherwise we are of the opinion in the light of the various decisions of the High Courts and the Supreme Court, that a part time employee would be a workman as understood in Section 2(s) thereof and would have the benefit of Section 25F of the Act. It is also relevant that the reference made to the Industrial Tribunal was as under:

Whether the claim of Sri A. Sankaralingam that he was an employee of New India Assurance Co. Ltd., from 2.1.86 to 15.3.89 as a Sweeper cum Water Carrier is correct. If so, whether the action of the management of New India Assurance Co. Ltd., in terminating his services w.e.f. 15.3.89 is justified? What relief, if any, to Sri A. Sankaralingam entitled to?

6. From a perusal of the reference, it is evident that the question as to the status of the workman as a full time or part time employee was not in issue and the only dispute was as to whether he was a workman with the appellant employer or not. As already observed above, it has not been disputed before us that the workman had indeed been employed but the dispute is only with regard to his status as a full time or a part time employee.

7. In the light of the above decisions, the question for consideration, which has been hotly debated, is the status of a part time employee and as to whether such an employee falls within the definition of "workman". Section 2(s) of the Act deals with the definition of "workman" whereas Section 25B talks about "continuous service". Both these provisions are reproduced below:

Section 2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Section 25B. Definition of continuous service.-For the purposes of this Chapter, _

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

8. A bare perusal of the two definitions would reveal that their applicability is not limited to only full time employees but all that is required is that the workman claiming continuous service must fulfill the specific conditions amongst others laid down in the two provisions so as to seek the shelter of Section 25F. Mr. Nanda's reliance on Uttarakhand Forest Hospital's case (supra) and Ram Lakhan's case (supra) is

misplaced. In Uttaranchal Forest's case (supra) this Court made a passing reference to the status of a part time employee, but the main issue before the Court was as to whether the workman had, in fact, put in 240 days of service which would entitle him to the benefit of Section 25F of the Act. This is what the Court had to say:

It is undisputed that the work of cleaning the hospital has been given to a contractor w.e.f. 17.8.1996. Materials were placed before the Labour Court to show that the workman was engaged for doing a part-time job and that he had worked for a few days in several months. The Labour Court itself on consideration of the documents and records produced noted as follows:

It is evident that the workman had worked in August 1996-16 days, July, 1996 - 30 days, May, 1996 - 30 days, April, 1996 - 30 days, March, 1996 - 29 days, February, 1996 - 29 days, January, 1996 31 days, December, 1995 -31 days, November, 1995 -20 days (full), October, 1995 - 19 days (full) September, 1995 - 25 days (full) @ Rs. 35/- per day. In addition to this, in November, 1995 - 3 days, October, 1995 - 9 days @ Rs. 20/- per day towards part time work and in September, 1995 - days part time @ Rs. 5/- per day, had worked.

The basic difference between a person who is engaged on a part-time basis for one hour or few hours and one who is engaged as a daily wager on regular basis has not been kept in view either by the Labour Court or by the High Court. The documents filed clearly establish that the claim of having worked more than 240 days is clearly belied.

The stand of the appellant that the respondent was called for work whenever work was available, and as and when required and that he was not called for doing any work when the same was not available has been established. The Labour Court itself noted that the workman was engaged in work by others as he was working in the appellants' establishment for one hour or little more on some days. It is also seen from the documents produced before the Labour Court that whenever respondent was working for full period of work he was being paid Rs. 35/- per day and on other days when he worked for one hour he was getting Rs. 5/-."

Accordingly, in view of the above said facts the preliminary objection taken by the respondent that claimant, Ravi Kunj who was a casual employee and has been engaged as per requirement of work does not fall within the definition of 2's' of the ID Act, 1947 is contrary to law and accordingly, rejected.

Second point of consideration:

Next point to be considered, "whether applicant is entitled for the benefit of the provisions of section 25 F of the Act, as per facts of the present case or not?"

In the present case as per the case of claimant he was not allowed to work and discharge his duties w.e.f. 12.06.2007, and in this regard reliance has been passed on the document (Annexure No.-II, paper No. 2/7).

From perusal of the same and Paper No. 36/2012 to 36/16, which are the statement in regard to the payment made by the Bank to the workman, the position which emerged out is that the workman has not worked for 240 days, preceding twelve months from the date of his retrenchment so, taking into consideration the said facts and the definition of continuous services as given u/s 25 B Act reads as under:

"[25B. Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
(i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

Explanation.- For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;*
- (ii) *he has been on leave with full wages, earned in the previous year; (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and 1 Substituted by Act 48 of 1954. 2 Substituted by Act 36 of 1964. Sec. 25E The Industrial Disputes Act, 1947 27 (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”*

Thus, taking into consideration the definition of continuous services as given u/s 25 B of the Act, as quoted herein above, and the law as laid down by Hon’ble Punjab & Haryana High Court in case of M/s **Virkram Singh v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar and another 2023 LLR 410**, after placing reliance on the judgment given by the Hon’ble Apex Court in the case of *Municipal Council, Dina Nagar, Tehsil & District, Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur & another (2015) 1 RSJ 765*; wherein it has held as under:

“4. We are of the considered opinion that the matter as noticed by the learned Single Judge also is fully covered by the decision of the Full Bench passed in Municipal Council, Dina Nagar (supra), whereby it was noticed as under:-

“Thus, the following principles are laid down:-

- (i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.*
- (ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.*
- (iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis Page No. 2 and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.*
- (iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.*
- (v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.*
- (vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.*
- (vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”*

As well as settled principles of law, keeping in view the provisions of section 25F of the Act, first prima facie onus is on the workman to substantiate through cogent evidence that he has worked 240 days continuously in twelve months prior to his retrenchment and thereafter, the respondent has rebutted the said facts however, as per the facts of the present case, the workman has failed to discharge the said onus, so, he is not entitled for any benefit of provisions of section 25 F of the Act.

Third point of consideration:

So far as the case taken by the claimant that his services were retrenched and Sri Ajay Kumar and Smt. Kailaso were continued in service, from perusal of the material on record, the position which emerged out that the said person were engaged on permanent post and later on their services were continued; whereas as per the own case of the workman,

the petitioner was not engaged in the Bank in said capacity. As such, from said facts, the petitioner cannot gain any benefit in his favour.

Fourth point of consideration:

So far as the judgment cited by U.K. Bajpai that present case is liable to be dismissed in view of the judgment passed by coordinate bench of this Tribunal at New Delhi in ID No. 72/2013 General Secretary, Punjab National Bank Workers Union, Dehradun v. Manger, Punjab Nation Bank, Dehradun & another, is not applicable to the facts and circumstances of the present case as in the said matter no evidence has been filed on behalf of the workman so his case was dismissed.

ORDER

For the foregoing reasons the reference is adjudicated against the workman, Ravi Kunj; and I come to the conclusion that he is not entitled to any relief.

Award as above.

Lucknow.

15th June, 2023

Let two copies of this award be sent to the Ministry for publication.

JUSTICE ANIL KUMAR, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1185.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, भारतीय जूट उद्योग अनुसंधान संघ (आईजेआईआरए), कोलकाता, के प्रबंधन के संबद्ध नियोजकों और श्री राम चंद्र दास, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-कोलकाता पंचाट (संदर्भ संख्या 4 OF 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल-42012/169/2018-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1185.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 4 OF 2019) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Indian Jute Industries Research Association (IJIRA), kolkata, and Shri Ram Chandra Das, Worker, which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42012/169/2018-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 4 OF 2019

Parties: Employers in relation to the management of

Indian Jute Industries Research Association (IJIRA)

AND

Their Workman

Appearance:

On behalf of Management : None

On behalf of the Workman : None

Dated 25th April, 2023

AWARD

The management of Indian Jute Industries Research Association (IJIRA) and the workman Ram Chandra Prasad (Das) are found absent when the matter is called. Therefore, a presumption can be drawn that the workman Ram Chandra Prasad (Das) who has challenged the termination of his service w.e.f. 26.12.2008 by the management of Indian Jute Industries Research Association without complying with the provision as laid down in Section 25 (f) of the I.D Act, is no more interested to pursue with the dispute or the present reference.

The Central Govt. through the Ministry of Labour's Order No. L-42012/169/2018-IR (DU) dated 28.01.2019 has referred the following dispute for adjudication by this Tribunal.

“Whether the action of the management of Indian Jute Industries Research Association, 17 Taratala Road, Kolkata-700088 in terminating the services of Sh. Ram Chandra Das with effect from 26.12.2008 without complying with the provisions as laid down under 25(f) of the ID Act is legal and/or justified? If not, to what relief the workman concerned is entitled to?”

The record shows the workman Ram Chandra Prasad (Das) who has espoused the above has failed to file his statement of claim. However, the management has filed written statement and documents and from where it appears that Ram Chandra Prasad (Das) was a permanent employee of Indian Jute Industries Research Association in the post of a Sweeper. That he had opted for voluntary retirement in the year 2009. That on voluntary retirement he was paid all his legal dues.

The management has alleged Ram Chandra Das (Prasad) was never terminated from the service or retrenched from the service. Therefore, the management has prayed for dismissal of the reference.

Be that of it may, there is nothing in the record to substantiate the claim of the concerned workman Ram Chandra Das (Prasad) that he was illegally terminated from the service with w.e.f. 26.12.2008 by the authorities of the Indian Jute Industries Research Association without complying with the provisions of Section 25(f) of the ID Act.

In view of the above, no dispute award is passed. Accordingly, Reference Case No. 04 of 2019 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1186.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिजनेस सॉल्यूशंस प्रा. लिमिटेड, कोलकाता; मेसर्स चेन्नई नेटवर्क इंफ्रास्ट्रक्चर लिमिटेड, कोलकाता ; मेसर्स एस एंड आईबी सर्विसेज प्रा. लिमिटेड, कोलकाता, के प्रबंधन के संबद्ध नियोजकों और श्री एस.के मोहिम, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट (संदर्भ संख्या 92 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्र काशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल -42011/159/2015-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1186.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 92 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Frontline (NCR) Business Solutions Pvt. Ltd.; M/s Chennai Network Infrastructure Ltd., Kolkata ; M/s S & IB Services Pvt. Ltd., Kolkata, and Shri S. K. Mohim, Worker, which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/159/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 92 OF 2015

Parties: Employers in relation to the management of

M/s Frontline (NCR) Business Solution Pvt. Ltd. And others

AND

Their Workman

Appearance:

On behalf of Management : Present

On behalf of the Workmen : None

Dated 24th April, 2023

AWARD

M/s Frontline (NCR) Business Solution Pvt. Ltd., M/s Chennai Network Infrastructure Ltd., Sri Ashis Doloi, General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU) and concerned workmen Sk. Mohim are found absent when the matter is called.

M/s SNIB Pvt. Ltd. is represented by Ld. Lawyer Sushil Karmakar.

Perused the record and from where it is seen that till date the Union and concerned workman who have espoused the present dispute have failed to file their statement of claim.

The Govt. of India through Ministry of Labour in exercise of the powers conferred under Section 10 (1) (d) and Sub-Section (2A) of the Industrial Dispute Act 1947 has referred the dispute.

1. Whether the action of management of M/s Frontline (NCR) Business Solutions, contractor of M/s Chennai Network Infrastructure Limited is justified by terminating the service of Shri Sk. Mohim is legal and /justified. If not, what relief the workmen are entitled to?
2. Whether the present contractor M/s S&IB Services Pvt. Ltd. is justified by denying reinstatement u/s 25(H) of ID Act, 1947. If not, what relief he workman are entitled to?

For adjudication by this Tribunal vide Order No. L-42011/159/2015-IR (DU) dated 02.11.2015.

It is very unfortunate to note that even after lapse of 08 years, the Union and the workman who have espoused the above dispute have failed to file their claim statement.

Therefore, there is no materials in the record to decide or determine the above referred dispute.

That apart, none appearance of the Union and workman prove that they are no more interested to pursue with the present reference case.

In the above, no dispute award is passed accordingly. Consequently, the Reference Case No. 92/2015 is disposed of

Send copy of Award to the Ministry for doing the needful.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1187.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिजनेस सॉल्यूशंस प्रा. लिमिटेड, कोलकाता ; मेसर्स चेन्नई नेटवर्क इंफ्रास्ट्रक्चर लिमिटेड, कोलकाता , के प्रबंधन के संबद्ध नियोजकों और श्री मिलखा सिंह, कामगार, द्वारा - महासचिव, पूर्व मेदिनीपुर, जिला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीटू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट(संदर्भ संख्या 95 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल-42011/156/2015-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1187.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 95 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Frontline (NCR) Business Solutions Pvt. Ltd.; M/s Chennai Network Infrastructure Ltd., Kolkata, and Shri Milka Singh, Worker, Through- The General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU), which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/156/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.95 OF 2015

Parties: Employers in relation to the management of

M/s Frontline (NCR) Business Solution Pvt. Ltd.

AND

Their Workman

Appearance:

On behalf of Management : Present

On behalf of the Workman : None

Dated 24th March, 2023

AWARD

M/s Frontline (NCR) Business Solution Pvt. Ltd., M/s Chennai Network Infrastructure Ltd., Sri Ashis Doloi, General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU) and concerned workman Sri Milka Singh are found absent when the matter is called.

M/s SNIB Pvt. Ltd. is represented by Ld. Lawyer Sushil Karmakar.

Perused the record and from where it is seen that till date the Union and concerned workmen who have espoused the present dispute have failed to file their statement of claim.

The Govt. of India through Ministry of Labour in exercise of the powers conferred under Section 10 (1) (d) and Sub-Section (2A) of the Industrial Dispute Act 1947 has referred the dispute.

1. Whether the action of management of M/s Frontline (NCR) Business Solutions, contractor of M/s Chennai Network Infrastructure

Limited is justified by terminating the service of Shri Sk. Mohim is legal and /justified. If not, what relief the workmen are entitled to?

2. Whether the present contractor M/s S&IB Services Pvt. Ltd. is justified by denying reinstatement u/s 25(H) of ID Act, 1947. If not, what relief he workman are entitled to?

For adjudication by this tribunal vide Order No. L-42011/156/2015-IR (DU) dated 02.11.2015.

It is very unfortunate to note that even after lapse of 08 years, the Union and the workman who have espoused the above dispute have failed to file of their claim statement.

Therefore, there is no materials in the record to decide or determine the above referred dispute.

That apart, none appears of the Union and workman prove that they are no more interested to pursue with the present reference case.

In the above, no dispute award is passed accordingly. Consequently, the Reference Case No. 92/2015 is disposed of

Send cop of Award to the Ministry for doing the needful.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1188.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिजनेस सॉल्यूशंस प्रा. लिमिटेड, कोलकाता ; मेसर्स चेन्नई नेटवर्क इंफ्रास्ट्रक्चर लिमिटेड, कोलकाता , के प्रबंधन के संबद्ध नियोजकों और श्री तपन भांजा, कामगार, द्वारा - महासचिव, पूर्व मेदिनीपुर, जिला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीटू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट(संदर्भ संख्या 96 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल -42011/153/2015-आईआर(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1188.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 96 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Frontline (NCR) Business Solutions Pvt. Ltd.; M/s Chennai Network Infrastructure Ltd., Kolkata, and Shri Tapan Bhanja, Worker, Through- The General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU), which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/153/2015-IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA****Present: Justice K. D. Bhutia, Presiding Officer.****REF. NO.96 OF 2015****Parties:** Employers in relation to the management of**M/s Frontline (NCR) Business Solution Pvt. Ltd. & Others.****AND****Their Workman/Union**

Appearance:

On behalf of S&IB Services Pvt. Ltd.

: Ld. Adv. Sushil Karmakar

On behalf of Other employers

: None

On behalf of the Workman/Union

: None

Dated 01st May, 2023**AWARD**

M/s Frontline (NCR) Business Solution Pvt. Ltd., M/s Chennai Network Infrastructure Ltd., Sri Ashis Doloi, General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU) and concerned workman Sri Tapan Bhanja are found absent when the matter is called.

M/s S&IB Pvt. Ltd. is represented by Ld. Lawyer Sushil Karmakar.

Perused the record and from where it is seen that till date the Union and concerned workmen who have espoused the present dispute have failed to file their statement of claim.

The Govt. of India through Ministry of Labour in exercise of the powers conferred under Section 10 (1) (d) and (2A) of the Industrial Dispute Act 1947 has referred the following issues for adjudication by this tribunal vide Order No. L-42011/153/2015-IR (DU) dated 02.11.2015.

1. Whether the action of management of M/s Frontline (NCR) Business Solutions, contractor of M/s Chennai Network Infrastructure

Limited is justified by terminating the service of Shri Tapan Bhanja is legal and /justified. If not, what relief the workmen are entitled to?

2. Whether the present contractor M/s S&IB Services Pvt. Ltd. is justified by denying reinstatement u/s 25(H) of ID Act, 1947. If not, what relief he workman are entitled to?

It is very unfortunate to note that even after lapse of 08 years, the Union and the workman who have espoused the above dispute have failed to file of their claim statement.

Therefore, there is no materials in the record to decide or determine the above referred dispute.

That apart, none appears of the Union and workman prove that they are no more interested to pursue with the present reference case.

In the above, no dispute award is passed accordingly. Consequently, the Reference Case No. 96/2015 is disposed of.

Send copy of award to the Ministry for doing the needful.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1189.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिजनेस सॉल्यूशंस प्रा. लिमिटेड, कोलकाता; मेसर्स चेन्नई नेटवर्क इन्फ्रास्ट्रक्चर लिमिटेड, कोलकाता, के प्रबंधन के संबद्ध नियोजकों और श्री शंकर भोरा, कामगार, द्वारा - महासचिव, पूर्व मेदिनीपुर, जिला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीटू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय- कोलकाता पंचाट(संदर्भ संख्या 97 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल -42011/155/2015-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1189.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 97 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Frontline (NCR) Business Solutions Pvt. Ltd.; M/s Chennai Network Infrastructure Ltd., Kolkata, and Shri Sankar Bhora, Worker, Through- The General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU), which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/155/2015-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.97 OF 2015

Parties: Employers in relation to the management of

M/s Frontline (NCR) Business Solution Pvt. Ltd. and Others

AND

Their Workman/ Union

Appearance:

On behalf of S&IB	: Ld. Adv. Sushil Karmakar
On behalf of Other Employer	: None
On behalf of the Workman/ Union	: None

Dated 01st May, 2023

AWARD

M/s Frontline (NCR) Business Solution Pvt. Ltd., M/s Chennai Network Infrastructure Ltd., Sri Ashis Doloi, General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU) and concerned workman Sri Sankar Bhora are found absent when the matter is called.

M/s S&IB Pvt. Ltd. is represented by Ld. Lawyer Sushil Karmakar.

Perused the record and from where it is seen that till date the Union and concerned workmen who have espoused the present dispute have failed to file their statement of claim.

The Govt. of India through Ministry of Labour in exercise of the powers conferred under Section 10 (1) (d) and (2A) of the Industrial Dispute Act 1947 has referred the following issues for adjudication by this tribunal vide Order No. L-42011/155/2015-IR (DU) dated 02.11.2015.

1. Whether the action of management of M/s Frontline (NCR) Business Solutions, contractor of M/s Chennai Network Infrastructure

Limited is justified by terminating the service of Shri Sankar Ghora is legal and /justified. If not, what relief the workmen are entitled to?

2. Whether the present contractor M/s S&IB Services Pvt. Ltd. is justified by denying reinstatement u/s 25(H) of ID Act, 1947. If not, what relief he workman are entitled to?

It is very unfortunate to note that even after lapse of 08 years, the Union and the workman who have espoused the above dispute have failed to file of their claim statement.

Therefore, there is no materials in the record to decide or determine the above referred dispute.

That apart, none appears of the Union and workman prove that they are no more interested to pursue with the present reference case.

In the above, no dispute award is passed accordingly. Consequently, the Reference Case No. 97/2015 is disposed of.

Send copy of award to the Ministry for doing the needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1190.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिजनेस सॉल्यूशंस प्रा. लिमिटेड, कोलकाता ; मेसर्स चेन्नई नेटवर्क इंफ्रास्ट्रक्चर लिमिटेड, कोलकाता , के प्रबंधन के संबद्ध नियोजकों और श्री खोकन भुंड्या, कामगार, द्वारा - महासचिव, पूर्व मेदिनीपुर, जिला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीटू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय - कोलकाता पंचाट(संदर्भ संख्या 99 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल -42011/151/2015-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1190.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 99 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Frontline (NCR) Business Solutions Pvt. Ltd.; M/s Chennai Network Infrastructure Ltd., Kolkata, and Shri Khokan Bhunia, Worker, Through- The General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU), which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/151/2015-IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.99 OF 2015

Parties: Employers in relation to the management of
M/s Frontline (NCR) Business Solution Pvt. Ltd. And others

AND
Their Workman

Appearance:

On behalf of Management	: Mr. Sushil Kumar Karmakar, Advocate
On behalf of the Workmen	: None

Dated 24th March, 2023

AWARD

M/s Frontline (NCR) Business Pvt. Ltd., M/s Chennai Network Infrastructure, Sri Ashis Doloi, General Secretary, Purva Medinipur Zela Security Service and Allied Workers Unjoin (CITU) and concerned workman Khokan Bhunia are found absent when the matter is called for hearing.

Mr. Sushil Karmakar, Ld. Advocate for M/s S&IB Services Pvt. Ltd. is found present.

As per record the case is fixed for adducing evidence from the side of the Union. The Union has failed to file the evidence of its witness.

None appears on behalf of the Union/ concerned workman and non-filing of evidence in chief on affidavit of witnesses by the union, a presumption can be drawn, that Union /concerned workman are not interested to proceed further with the hearing of present reference case.

However, the Central Govt. through Ministry of Labour's Order No. L-42011/151/2015 (IR (DU)) dated 02.11.2015 has referred the following issues for determination by this Tribunal:-

1. Whether the action of management of M/s Frontline (NCR) Business Solution, contractor of M/s Chennai Network Infrastructure Limited is justified by terminating the service of Shri Khokan Bhunia is legal and/justified? If not, what relief the workman is entitled to?
2. Whether the present contractor M/s S & IB Services Pvt. Ltd. is justified by denying reinstatement u/s 25(H) of ID Act, 1947. If not, what relief the workman are entitled to?

The record shows that the concerned workman had filed his statement of claim and where he has stated that Aircel Cellular Limited / Aircel Limited / Dishnet Wireless Ltd. had installed Mobile Towers throughout the district Purva Medinipur and through M/s Frontline, it engaged around 1500 security guards to run guard employees those mobile tours.

The concerned workman had rendered his services to M/s Frontline, the Service Provider of Aircel / Dishnet Wireless Limited since 16.07.2005 without any break.

Subsequently, Chennai Network Infrastructure Limited took over the Mobile Telecom. Services from Aircel Limited / Dishnet Wireless Limited in the Year 2010.

The concerned workmen continue to work under the new management of M/s Chennai Network Infrastructure Limited.

Subsequently, termination of contract between Chennai Network Infrastructure Limited and M/s S&IB Services Pvt. Limited was appointed w.e.f. 30.10.2014.

M/s SNIB Services Limited absorbed all the guard of M/s Frontline, but it failed to absorb the concerned workman. His service was terminated without giving him all statutory financial benefits. Therefore, he has alleged termination of his service w.e.f. 30.10.14 is illegal and prayed for reinstatement with full back wages.

The record shows M/s S&IB Services contested the claim of the workman by filing a written statement. It has contended that it never engaged the concerned workman to work as a guard for M/s Chennai Network. It has no employer and employee relationship with the concerned workmen. It never terminated the service of the concerned workman and as such, question of reinstatement of the concerned workman does not arise. Therefore, it has prayed for dismissal of the reference.

Unfortunately, apart from the claim statement the concerned workman and Union have failed to produce any oral and documentary evidence to substantiate and prove the concerned workman was an employee of

M/s Frontline or later he was absorbed by M/s S&IB Pvt. Limited on termination of contract in between M/s Chennai Network Infrastructure Limited and M/s Frontline or that M/s Frontline has illegally terminated the service of concerned workman on 30.10.14.

In fact, it appears that on termination of contract in between M/s Network Infrastructure Limited and its Service Provider M/s Frontline on 30.04.2014, the service of concerned workman an employee of M/s Frontline too stands terminated.

Nothing has come on record to show that on termination of the contract in between M/s Chennai Network and M/s Frontline, there was an undertaking by Chennai Network that all the employees of M/s Frontline will be absorbed by its new Service Provider M/s S&IB Services Pvt. Limited or that M/s "S&IB voluntarily agreed to absorb all the existing employees of M/s Frontline.

Therefore, nothing is there in the record to substantiate the claim of the Union/ concerned workman apart from the uncorroborated statement of claim.

In view of the above, no dispute award is passed. Consequently, Reference Case No. 99 of 2015 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1191.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स निर्देशक, अंतर्देशीय जलमार्ग प्राधिकरण, कोलकाता; मैसर्स एशियन सिक्योरिटी एंड अलाइड सर्विस, कोलकाता, के प्रबंधन के संबद्ध नियोजकों और महासचिव, पूर्व मेदिनीपुर, जिला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीटू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय - कोलकाता पंचाट (संदर्भ संख्या 104 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल -42011/144/2015-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1191.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 104 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, M/s Inland Waterways Authority of India, Kolkata ; M/s Asian Security & Allied Service, Kolkata, and Shri Khokan Bhunia, Worker, Through- The General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU), which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/144/2015-IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.104 OF 2015

Parties: Employers in relation to the management of

M/s Asian Security & Allied Service and another

AND

Their Workmen

Appearance:

On behalf of Management : Absent

On behalf of the Workmen : None

Dated 25th April, 2023

AWARD

The principal employer M/s Inland Waterways Authority of India and contractor employer M/s Asian Security & Allied Service are found absent when the matter is called.

Similarly, the union of Purba Medinipur Zela Security Service & Allied Workers union (CITU) who has espoused the dispute too is found absent when the matter is called.

It is very interesting to note the Union which has espoused the present dispute in the year 2015 has failed to file its claim statement till date. Such conduct on the part of the union prove that union after espousing the dispute before the authorities concerned is no more interested to pursue with the present dispute.

The Central Govt. through Ministry of Labour's Order No. L-42011/144/2015 (IR(DU)) dated 02.12.2015 has referred the following issue for adjudication by this Tribunal:-

“Whether the action of the management of M/s Asian Security & Allied Service, contractor of M/s Inland Waterways Authority of India is justified without adhering section 2F (a) & (b) of ID Act, 1947 by terminating the services of Sri Siba Sankar Kar is legal and/or justified? If not, what relief the workman is entitled to?

Since there is no statement of claim or any material to substantiate the dispute raised by the union this Tribunal has no other option but to pass a no dispute award.

Accordingly, Reference Case No. 104 of 2015 is disposed of

JUSTICE K.D. BHUTIA, Presiding Officer

नई दिल्ली, 7 जुलाई, 2023

का.आ. 1192.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स निर्देशक, अंतर्देशीय जलमार्ग प्राधिकरण, कोलकाता; मैसर्स एशियन सिक्योरिटी एंड अलाइड सर्विस, कोलकाता, के प्रबंधन के संबद्ध नियोजकों और महासचिव, पूर्व मेदिनीपुर, जिला सुरक्षा सेवा और संबद्ध श्रमिक संघ (सीटू), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- कोलकाता पंचाट(संदर्भ संख्या 105 OF 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.07.2023 को प्राप्त हुआ था।

[सं. एल -42011/145/2015-आईआर(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 7th July, 2023

S.O. 1192.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 105 OF 2015) of the Central Government Industrial Tribunal cum Labour Court – Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, M/s Inland Waterways Authority of India, Kolkata ; M/s Asian Security & Allied Service, Kolkata, and Shri Khokan Bhunia, Worker, Through- The General Secretary, Purva Midinipur, Zela Security Service and Allied Workers Union (CITU), which was received along with soft copy of the award by the Central Government on 07.07.2023.

[No. L-42011/145/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.105 OF 2015

Parties: Employers in relation to the management of

M/s Asian Security & Allied Service and another

AND

Their Workmen

Appearance:

On behalf of Management

: Absent

On behalf of the Union

: None

Dated 25th April, 2023**AWARD**

The principal employer M/s Inland Waterways Authority of India and contractor employer M/s Asian Security & Allied Service are found absent when the matter is called.

Similarly, the union of Purba Medinipur Zela Security Service & Allied Worker's union (CITU) who has espoused the dispute too is found absent when the matter is called.

It is very interesting to note the Union who has espoused the present dispute in the year 2015 has failed to file its claim statement till date. Such conduct on the part of the union prove that union after espousing the dispute before the authorities concerned is no more interested to pursue with the present dispute.

The Central Govt. through Ministry of Labour's Order No. L-42011/145/2015 (IR(DU)) dated 02.12.2015 has referred the following issue for adjudication by this Tribunal:-

“Whether the action of the management of M/s Asian Security & Allied Service, contractor of M/s Inland Waterways Authority of India is justified without adhering section 2F (a) & (b) of ID Act, 1947 by terminating the services of Sri Subal Chandra Tunga is legal and/or justified? If not, what relief the workman is entitled to?”

Since there is no statement of claim or any material to substantiate the dispute raised by the union this Tribunal has no other option but to pass a no dispute award.

Accordingly, Reference Case No. 104 of 2015 is disposed of

JUSTICE K.D. BHUTIA, Presiding Officer